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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~395.~~ 180

L. MADISON DAY, PLAINTIFF IN ERROR,

vs.

THOMPSON MICON, SUSAN VIRGINIA MICON, (THE WIDOW OF GEORGE P. RING,) AUGUSTIN MICON, WILLIAM MICON, AND RICHARD W. AND WILLIAM H. MICON, MINORS, BY THEIR TUTOR, AUGUSTIN MICON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JUNE 14, 1879.

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SUPREME COURT OF THE UNITED STATES.

No. 395.

L. MADISON DAY, PLAINTIFF IN ERROR,

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IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 State of Louisiana, second judicial dist. court, parish of Jefferson.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN AND L. MADISON DAY. } No. 3371.

Petition.—Filed Feb'y 21st, 1868.

T. MICON & AL.
vs.
J. P. & J. BENJAMIN, L. MADISON DAY.

The State of Louisiana, parish of Jefferson.

2 To the honorable the judge of the district court for the parish aforesaid:

The petition of Thompson Micon, of Mississippi, Susan Virginia Micon, the widow of George P. Ring, A'gustin Micon, Willie Annie Micon, Richard W. Micon, & William H. Micon, the last two being minors and herein represented by their tutor, Augustin Micon, all of the city of New Orleans, who are the heirs at law of Mrs. Anna D. Micon, late widow of William C. Micon, a resident of the city of New Orleans, respectfully shows to your honor that Judah Philip Benjamin, formerly of the city of New Orleans, and Joseph Benjamin, formerly of the parish of Catahoula, on the 23rd day of July, A. D. 1858, at the city of New Orleans, became indebted to the said Mrs. Anna D. Micon in the sum of ten thousand dollars, for money lent by the said Anna D. Micon to them, which they agreed to return from four years from the said date, and to pay for the use thereof as capital the interest of eight per cent. per annum, and that during the four years aforesaid, the said interest was to be paid in quarterly instalments of two hundred dollars each; and the said Judah Philip Benjamin and Joseph Benjamin, to secure the payment of the capital and interest, hypothecated and mortgaged that certain square of ground, with the buildings and improvements there-
3 on, situated in Hurtsville, parish of Jefferson, bounded by Nayades, Arabella, Cornelius, & Nashville streets, and designated by the number sixty-three on the original plan of said Hurtsville, drawn by Benjamin Buisson, on the 17th day of March, 1837, & deposited in the office of Edward Barnett, a notary public in the city of New Orleans, which square measures two hundred & forty-three $\frac{4}{12}$ feet on Nayades street & four hundred & twenty-six $\frac{4}{12}$ feet on Arabella street, two hundred & forty feet front on Cornelius street, and three hundred & seventy-seven $\frac{8}{12}$ feet on Nashville street, & which said parcel or square of ground was free from incumbrance, which said mortgage or hypothecation was duly recorded in the parish of Jefferson, in the office of recorder of mortgages, in book No. 22, folio 62, as also in book 19, folio 674. Your petitioners further state that the act aforesaid was made before Hilary Breton Cenas, a notary public of the city of New Orleans, in due form, as will appear by the act aforesaid, signed by all the parties to the same, and a copy whereof is hereto annexed. Your petitioners further state to your honor that the said Judah P. Benjamin, since the year A. D. 1861, has resided beyond the limits of this State, & that at this date, and for more than twelve months, he has been beyond the limits of the United States. They further state that Joseph
4 Benjamin is a resident of the parish of Orleans. Your petitioners

further represent that the said Anna D. Micon, the mortgagee, died on the 10th day of May, 1864, and that the plaintiffs are her children & heirs at law under the laws of Louisiana, & have accepted her succession. They further represent & show to your honor that they have duly demanded of the said Judah P. Benjamin & Joseph Benjamin the payment of the said debt, but that they have neglected and refused to pay the same, although said demand was made more than thirty days before the commencement of this suit, and that the said debt has been due from the 23d day of July, 1862, and all the interest on the same has been due since the 1st of January, A. D. 1862. They further state that the property mentioned in the said act is now possessed by L. Madison Day as a third possessor, and that he claims to hold the same under some pretended title which is subordinate to, and is wholly inferior to, the claim of your petitioners. Your petitioners pray that a curator ad hoc be appointed for said Judah P. Benjamin, who is an absentee from the State, and that citation issue to said Joseph Benjamin and to L. Madison Day to appear before this court, and to answer this petition, & that the said Judah P. Benjamin & Joseph Benjamin be condemned for the payment of said debt in solido, with interest thereon, &
5 that the mortgaged property may be sold for the payment thereof, and that the said L. Madison Day may be cited to surrender and abandon his claim on said property, after ten days' notice, unless he prefer to pay the debt, interest, & costs as aforesaid.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
Per Pl'ffs.

I acknowledge service of this petition, & waive copy & citation. I acknowledge demand more than thirty days prior to this date, & inability to pay.

New Orleans, 3d Feb'uary, 1868.

(Signed) J. BENJAMIN.

Order.

Let W'm Mithoff, j'r, esqr., attorney at law, be appointed curator ad hoc to represent the absent defendant, Judah P. Benjamin, as prayed for, and according to law.

Parish of Jefferson, La., 25th Feb'y, 1868.

(Signed) C. O. DUGUE,
Judge 2d Jud'al Dist. La.

Citation.—Filed Feb'ry 26th, 1868.

T. MICON
vs.
J. P. BENJAMIN & L. MADISON DAY. } No. 3371.

THE STATE OF LOUISIANA,
Parish of Jefferson:

6 Second judicial district court.

Mr. L. MADISON DAY:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the second judicial dis-

trict court, in the parish of Jefferson, in ten days after the service hereof.

Witness the Honorable C. O. Dugue, judge of the said court, this 24th day of Febr'y, in the year of our Lord 1868.

(Signed) H. BIENVENUE, *D'y Clerk.*

The above citation with a certified copy thereof and of petition, were received by the sheriff of the parish of Jefferson the 24th day of Feb'uary, A. D. 1868.

(Signed) F. M. SECAID, *D'y Sheriff.*

Sheriff's return.—Filed Febr'y 26th, 1868.

On the 26th day of Feb'uary, A. D. 1868, I made service of the copies of petition and citation above mentioned on L. Madison Day, one of def'ts herein, at the usual place of domicil or residence of said defendant, situated in the parish of Jefferson, about 2 miles from
7 the court-house of said parish, by delivering them to a free person apparently above the age of fourteen years, whose name is Mrs. Ruth Day, and who was at the time living in the house of the said L. M. Day, being absent as I have ascertained by interrogation.

Returned same day.

(Signed) A. E. LIVANDAIS, *D'y Sheriff.*

District court, parish of Jefferson.
Returned and filed Febr'y 26th, 1868.

(Signed) C. G. BENTLEY, *D'y Clerk.*

Notice to curator ad hoc.—Filed Febr'y 26th, 1868.

2d jud'l dis't court of L'a, in & for the parish of Jefferson.

T. MICON
vs. } No. 3371.
J. P. & J. BENJAMIN & L. MADISON DAY.

To W'M MITHOFF, j'r, esqr.,
Att'y at Law:

Please take notice: The following order was this day rendered by this hon. court:

Let W'm Mithoff, j'r, esqr., attorney at law, be appointed curator ad hoc, to represent the absent defendant, Judah P. Benjamin, as prayed for, & according to law.

Parish of Jefferson, L'a, 25th July, 1868.

8 (Signed) C. O. DUGUE,
Judge 2d Jud'l Dis't L'a.

(Signed) C. G. BENTLEY, *D'y Clerk.*

Sheriff's return.—Filed Febr'y 26th, 1868.

Received on the 25th of Febr'y, 1868, and on same day, month, and year served a copy of within notice of appointment on W'm Mithoff, j'r, in person.

Returned same day.

(Signed) F. M. SECAID, *D'y Sheriff.*

Citation.—Filed Febr'y 25th, 1868.

T. MICON
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

The State of Louisiana, parish of Jefferson, second judicial district court.

Mr. J. P. BENJAMIN—(W'm Mithoff, j'r, curator ad hoc:)

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the second judicial district court, in the parish of Jefferson, in ten days after the service hereof.

9 Witness the Honorable C. O. Dugue, judge of the said court, this 25th day of Feb'uary, in the year of our Lord 1868.

(Signed) C. G. BENTLEY, *D'y Clerk.*

The above citation with a certified copy thereof and of petition, were received by the sheriff of the parish of Jefferson the 25th day of Feb'uary, A. D. 1868.

(Signed) F. M. SECAID, *D'y Sheriff.*

Sheriff's return.—Filed Febr'y 25th, 1868.

On the 25th day of Feb'uary, A. D. 1868, I made service of the copies of petition and citation above mentioned, by delivering them to William Mithoff, j'r, esqr., curator ad hoc, in person.

Returned same day.

(Signed) F. M. SECAID, *D'y Sheriff.*

Motion of curator ad hoc.—Filed March 7th, 1868.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

Second judicial district court of L'a, in and for the parish of Jefferson

On motion of W'm Mithoff, j'r, curator ad hoc, to represent the absent defendant, Judah P. Benjamin, it is ordered by the court that the said curator ad hoc have an additional delay of three days to file his answer herein.

Answer of L. Madison Day.—Filed March 9th, 1868,

10 In the second judicial district of Louisiana, held in and for the parish of Jefferson.

THOMPSON MICON, SUSAN VIRGINIA MICON, widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, & William H. Micon, the last two being minors, represented by Augustin Micon, tutor, &c.,
vs.
JUDAH PHILIP BENJAMIN, JOSEPH BENJAMIN, & L. Madison Day. } No. 3371. Separate answer of L. Madison Day, defendant.

To the honorable the judge of the second judicial district court of the State of Louisiana, in and for the parish of Jefferson.

Now into court here comes L. Madison Day, one of the defendants in the above-entitled cause, and for answer to the said plaintiff's petition herein saith that he denies all and singular the material allegations in said plaintiffs' petition contained and set forth, except so far as the same or any of them are hereinafter confessed and avoided.

And further answering in this behalf, said defendant saith that said plaintiffs ought not to further have and maintain their said action against said defendant, for he saith that said plaintiffs, all, either, or any of them, at the time of the institution of this action, and at
11 all times since that time, have and possessed or possess no right, title, interest, hypothecation-liens, or mortgage-right in or to the real estate, lands, or immovable property named, set forth, and described in said plaintiffs' petition, or to or in any right, appurtenance, hereditament, or improvement in any wise belonging or appertaining thereto, but, on the contrary thereof, all the rights, title, interest, and property in and to said lands, tenements, real estate, and unmmoveable property, and the improvements thereon, so set forth and described in said plaintiffs' petition, together with all and singular the right, title, appurtenances, hereditaments, and privaleges thereunto belonging, or in any wise appertaining, did, before and at the time of the commencement and institution of this action, and at all times since and at this time, belong to, and are the sole individual property of, said defendant, by good, legal, absolute, and indefeasable title in law, absolutely free from all and any liens, privileges, hypothecation, and mortgage therein and thereon which the said plaintiffs set up and pretend to have and possess in and to the same, by means of the pretended act of hypothecation and mortgage alleged and set forth in their said petition herein, for this, that by the force and effect, and by virtue of the provisions of an act of the Congress of the United States, approved July 17th, A. D. 1862, entitled An act to
12 suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes, and the laws of the United States of America, all of the said lands, tenements, property, and hereditaments set forth and described in said plaintiffs' petition, at and before the first day of January, A. D. 1864, became and were subject to and liable to seizure and confiscation to the Government of the United States of America, together with the interest, title, and rights, and the pretended title, interest, and rights of all and all manner of persons whatsoever that had, or pretended to have, any right, title, or interest, or pretended right, title, or interest, in or to the same, or any part thereof, including any and all pretended right, title, interest, hypothecation, mortgage, or lien which said plaintiffs then and there had, or pretended to have, in and to said property, or any part thereof, at that time.

That by virtue of the power and authority by law vested in the President of the United States, and the duty imposed upon him by the laws of the United States, he caused said property described in said plaintiffs' petition to be lawfully seized and taken into the possession of the United States before and on the said first day of January, A. D. 1865, in order that the same, the use and proceeds thereof, might be applied to the support of the Army of the United States according to the terms, conditions, and provisions of the statu'es in such case made and provided.

13 That said property, and all and every portion thereof, so being

lawfully seized and in the possession of the United States as aforesaid, for the reason, cause, use, and for the purpose aforesaid, and said property, and all and every part and portion thereof, lying and being situate in the parish of Jefferson, in the State of Louisiana, and within the territorial jurisdiction of the United States district court for the eastern district of Louisiana aforesaid, and subject to and within the lawful reach of the process of said district court of the United States, and in all things subject to the jurisdiction of said court in that behalf: In order to secure the condemnation and sale of said property after the same had been lawfully seized and in possession of the United States aforesaid, and so that it might be made available for the purpose aforesaid, by virtue of the authority, requirements, and provisions of the statu'es of the United States in such case made and provided, at the instance and in behalf of the United States of America and the Government thereof, on or about the 26th day of January, A. D. 1865, in said district court of the United States in and for the eastern district of Louisiana, at and during the regular term of said court, begun and holden at the city of New Orleans, in said district, according to law, on the third Monday in November, in the year of our Lord one thousand eight hundred & sixty-four, by his honor, Edward H. Durell, the lawful judge thereof, certain proceedings in rem were instituted in behalf
14 and in the name of the United States of America, against said property described and set forth in said plaintiffs' petition in this action.

That on the day and year aforesaid, to wit, on or about the 26th day of January, A. D. 1865, at New Orleans aforesaid, in the district aforesaid, in the court aforesaid, having full and complete jurisdiction thereof as aforesaid, and at and during the term aforesaid, Rufus Waples at that time being the duly appointed and qualified district attorney of the United States, for and within the district aforesaid, and having full and competent authority in that behalf, by and with the consent and at the direction, instance, and request of the Government of the United States of America, in open court, in behalf of and representing the United States, by virtue and force of the provisions of statu'es of the United States in such case made and provided, in compliance with the rules and law governing such matters in said courts, in the name of the United States of America, instituted said proceedings in rem against said property, named in said plaintiffs' petition in this action by them, and there in open court, exhibiting and filing a certain libel of information in writing, duly drawn, framed, and made in due form of law and signed by said Rufus Waples, then being United States district attorney in and for the district aforesaid, against the said property named, and described, and set forth in said plaintiffs' petition in this action, and against all persons intervening for their interest therein, including, by effect of law, any and all owner or owners, payee or payees of said pretended mortgage or act of hypothecation alleged and set forth
15 in said plaintiffs' petition in this cause in a case of seizure and forfeiture.

That in said libel of information so exhibited, and filed as aforesaid, was, and is, definitely, distinctly, and articulately, according to law and the rules of proceedings governing such matters, in due form, articulately propounded, pleaded, and set forth in writing, certain distinct and definite charges, matters, and allegations, whereby it distinctly and definitely appears that, by virtue of the statu'es of the United States of America, in such case made and provided, and then and at that time in full force and effect, said real estate, property, land, unim'oveable property,

together with all and singular all the rights, hereditaments, and appertenances thereunto belonging, described and set forth in said plaintiffs' petition in this case, and also fully described in said libel of information and charged therein to have been the property of one Judah P. Benjamin, became, and was, forfeited to the United States of America, and ought to be condemned and forfeited to the use and benefit of the United States, together with the interest or interests, right or rights, of any and all manner of persons claiming any right, title, or interest therein or thereto; by reason whereof the said United States district attorney for and in behalf of the said United States in said libel of information, in due form of law, as he lawfully might, prayed the said court, among other things, that process of monition in due form of law might issue against said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at an early day, to be named in said process, to be and ap-
16 pear in said court and answer said libel of information, and that an order of publication might be made in the usual form in proceeding in rem, and that after due proceedings had said property and the interest of any and all persons therein might be condemned and forfeited by the judgment of said court to the United States of America.

That according to law, in the due course of proceedings in said court, in such cases, and in compliance with the prayer in said libel of information contained, after said libel had been so exhibited, and filed as aforesaid, and on the same day, said court having full and competent authority and jurisdiction so to do, made an order in said cause, whereby among other things it was lawfully ordered that notice be given to the owner or owners of said property and real estate, and all persons interested therein, or claiming any interest therein, to appear and answer said libel of information on the 13th day of Feb'uary, A. D. 1865, and show cause, if any they have, why said property and real estate should not be condemned and sold according to law, and that notice thereof be given, by posting a copy of said order upon the door of the court-house, in said district, and by publication in the "True Delta" newspaper, twice a week previous to said 13th day of Feb'uary, A. D. 1865, the first publication to be on or before the 28th day of January, 1865.

That on the 26th day of January, A. D. 1865, aforesaid, a process of monition, duly issued according to law, was issued out of said court under the seal thereof, and attested according to law and deliv-
17 ered to the United States marshal in and for said district, commanding said marshal and his lawful deputies, among other things, to cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the said property, described in the said libel of information, to be and appear before the said district court of the United States, for the said district, on or before the said 13th day of Feb'uary, 1865, that day being the third Monday after the filing of said libel, and the institution of said proceedings in rem, to show cause, if any they had, why said property should not be condemned and sold according to the prayer of said libel.

That due, full, and legal service of said process was made by said marshal, according to the law in such case provided, whereby and by force whereof said court then and there became and was vested with full power, authority, and jurisdiction over said property, and all and all manner of persons claiming and pretending to have any right, title, and interest in or to said property, and over any and all claims which

they or any of them had, or could in law assert against, in, or to the same, and the full power, authority, and jurisdiction to hear, adjudge, pronounce, and decree upon the same. And by means whereof, all and all manner of persons whatsoever became and were informed, cited, and admonished, that said proceedings had been instituted and were pending in said court, against said property, and all persons claim-
18 ing any interest therein, and whereby all and all manner of persons having or pretending to have any right, title, or interest in or to said property, including said plaintiffs, and all other holders or owners, payee or payees of said alleged mortgage, and hypothecation or act of mortgage and hypothecation set forth in said plaintiffs' petition herein, became, and were in law, parties to said cause, and compellable in law either to obey said process and appear in said court within the delay allowed by law, and assert and establish any right, claims, lien, mortgage, or title, which they or either of them might have in or to said property libelled, or forever abandon the same, and stand silent respecting the same forever thereafter.

That in the due course of proceedings in said cause in said court, and after the expiration of the period and delay within which said person or persons claiming to have any lien, privilege, right, and title, in and to said property, real estate, land, and tenements so libelled in said cause, there required by law to appear in said court, in said cause, and assert the same, and answer said libel of information, said plaintiffs in this cause, and all manner of persons claiming to be or to have been the owner or owners of said mortgage, privilege, hypothecation or obligation alleged and set forth in said plaintiff's petition in this cause, and the payee or payees thereof, having utterly failed to be and appear in said cause in said court and defend themselves against the same, or to assert, claim, and establish any right, title, or interest in or to
19 the said property, libelled in said cause, they, together with all other person's were, after due proceedings had, and proclamation made by said court, adjudged and pronounced in contumacy and default in said cause, and the said libel of information and all the matters and allegations pleaded and set forth therein, adjudged and taken pro confesso against them and all of them.

That afterwards, on or about the 18th day of March, A. D. 1865, at and during said term of said court, in the due and regular course of proceedings in said cause in said court, the said court and the judge thereof having full, lawful, and competent right and authority so to do, did render a final judgment and decree in said cause, by which judgment and decree it was then and there solemnly and publicly adjudged, sentenced, and decreed in open court by the judge thereof, by virtue of the power and authority in him vested, that all of said property named and described in said libel of information in said cause, together with all the improvements thereon, be sentenced, condemned, and forfeited to the United States of America; and further that a writ of venditioni exponas issue, and the said property sold, and the proceeds thereof distributed according to law, which said judgment and decree was on the 24th day of March, A. D. 1865, duly signed by said judge; that the property, real estate, and lands described in said plaintiffs' petition herein are in all things the same and identical with the said property so condemned
20 and forfeited to the United States by the force and effect of said decree.

And said defendant saith that, by force of the statu'es and laws of the United States in such case made and provided, and by the force and effect of said sentence, judgment, and decree, and of the proceedings in

said court upon which said sentence and decree was and is based, the said plaintiffs in this cause, and any and all holders, owners, payee or payees of said alleged mortgage or obligations in said petition set forth, became, and at all times after the institution of said cause, and at the time of said final judgment and decree therein, were in law actual parties litigant in said cause, and were and are in all things affected, bound, and concluded in law by the said final sentence, judgment, and decree therein; and that any and all pretence of title, right, lien, privilege, mortgage, or hypothecation which they, any, or either of them may at any time before the date of said decree have or had, in or to said property or any part thereof, by virtue of said alleged act of hypothecation or mortgage, any obligation therein contained, or by any other means, was finally and forever adjudged, decreed, and pronounced against, in and by said decree in said cause, and said property and all and every part thereof in all things forever freed and discharged from any and all right or rights, privileges, liens, or mortgages whatsoever,

21 which they, any, or either of them may have had or pretended to have prior to said judgment, sentence, and decree rendered against them and said property as aforesaid; that by force of the statu'es and laws of the United States in such case made and provided, said judgment and decree vested in the United States of America full, complete, and absolute title to said property, and all and every part thereof, free from any and all mortgages, privileges, liens, and rights of other person or persons whatsoever.

That the United States so being the sole owner of said property by free and unencumbered title as aforesaid, afterwards, to wit, on or about the 27th day of March, A. D. 1865, caused to be issued out of said district court, under the seal thereof, in due form of law, duly attested as required by law, and based upon the decree and judgment aforesaid, a certain writ of venditioni exponas, directed to the marshal of the United States for the eastern district of Louisiana, or either of his lawful deputies, which said writ recited said judgment and decree, and commanded the said marshal or his deputies to sell the said property to the highest bidder at public auction at the Merchants and Auctioneers' Exchange, in the city of New Orleans, within said district, on the 4th day of May, at 12 o'clock m., A. D. 1865, after due and legal advertisement, notice, proclamation, &c.

That by virtue of said writ said marshal, after giving due legal notice and advertisement as required by law and directed in said writ, did expose and offer said property for sale on said 4th day of May, at the

22 hour named in said writ, at the place, and as directed by said writ, in all things complying with the law governing such matters.

That said defendant became and was the last and highest bidder for said property at said sale, whereupon the same was adjudicated by said marshal to said defendant, who then and there paid to the said marshal for the United States, the price and sum bid therefor, and thereby became, and in law was, the lawful owner of all of said property free from any and all pretended liens, claims, privileges, or mortgages held by said plaintiffs in this cause or any other person or persons whatsoever.

That afterwards, and in order to furnish said defendant full and perfect evidence of the absolute and perfect title of said defendant in and to said property described in said plaintiffs' petition, and so sold and adjudicated to said defendant at the marshal's sale aforesaid, the said marshal, by virtue of the authority in him vested, and under the direction of the said district court, and the lawful rules thereof made by said court, having full and lawful authority in that behalf, on or about the

12th day of May, A. D. 1865, did make, execute, and deliver in due form of law to said defendant an act or deed of sale evidencing in due form of law said sale and adjudication to said defendant, and granting and conveying all the said lands, premises, and property described in said plaintiffs' petition, and so condemned and forfeited to the United States as aforesaid, and so sold to said defendant at said marshal's sale,
23 whereby this defendant became and was and is in law unto himself, his heirs, and lawful assigns in all things possessed and seized of all said lands and property, and all improvements and appurtenances thereunto appertaining by full, complete, absolute, and unencumbered title, free from any and all pretended liens, mortgages, hypothecations, or obligations in favor of said plaintiffs or any other person or persons whatsoever, all of which more fully and at large appears by the records and proceedings of record in said cause now remaining in said court at New Orleans aforesaid.

And said defendant further saith that said act of sale, so made by the marshal aforesaid, was and is duly recorded, according to law, in the office of the register of conveyances in and for the parish of Jefferson aforesaid. And that of all and singular the matters in this answer stated and set forth the said plaintiffs, and all of them, have, at all times, had full notice.

Wherefore, by reason of the promises, this defendant prays that there be judgment in his favor and against the plaintiffs, with costs.

And said defendant, further answering, for further answer to said plaintiffs' petition, saith that said plaintiffs ought not to further have and maintain their said action against him, for he saith that by virtue and force of the statu'es of the State of Louisiana, in such case made and provided, and by authority of the law governing said State, at and before the 8th day of October, A. D. 1864, and at the time the
24 same were assessed, there had been and was charged and assessed against the said property named and described in the said plaintiffs' petition, the owner or owners thereof, a large sum in money as taxes and dues due to the State of Louisiana; that said taxes had been and were charged and assessed against said property, and the owners thereof, by lawful authority, and after all the enactments and provisions of the law governing such matters, in said State, at that time, had in all things been fully complied with, whereby said dues and taxes so due, as aforesaid, became and were a charged lien and privilege on said property, in all things superior to any and all other liens, hypothecation, or privileges whatsoever, and superior in rank and order to any and all mortgage, hypothecation, privilege, or claim which said plaintiffs, or any owner or owners, payee or payees of said alleged mortgage, obligation, or hypothecation, alleged and set forth in said plaintiffs' petition, and by force of law became and was binding against said property, and any and all persons claiming any property, interest, or title therein; that said plaintiffs and all parties or persons claiming to own said obligation alleged and set forth in said plaintiffs' petition, and all and all manner of persons having or pretending to have any right or title in or to said property, although in all things legally notified that said dues and public taxes were so assessed and charged against them and against said property, and that they were re-
25 quired to pay the same, and that payment thereof was, by the proper authorized officer of the State, in due time and form demanded, yet they, and all of them, made default therein, and failed and neglected to pay the same within the time and in the manner required by the laws governing such matters in the State of Louisiana at the

time when said taxes were so due and payable as aforesaid. By reason whereof, and by effect of the laws aforesaid, said property, and all of it, including any and all pretended right, lien, privilege, mortgages, hypothecations, and title which said plaintiffs, or any and all holders, owners, payee or payees of said supposed mortgage or obligation alleged and set forth in said plaintiff's petition, became and was liable and subject to be seized and sold at public auction to the highest bidder, to effect the payment of all said taxes and dues so due to the State of Louisiana, as aforesaid.

That being so liable, as aforesaid, one John E. Schaffer, then and at that time being the duly qualified and acting sheriff of the parish of Jefferson, in said State, within which said parish said property lies and is situate, having full and competent authority in that behalf, did, as required by law, as sheriff of said parish and State tax-collector in and for said parish, on or before the 24th day of September, A. D. 1864, seize all of said property described in said plaintiff's petition, to pay and satisfy the said taxes of the State of Louisiana, assessed and charged against said property for the years 1861, 1862, & 1863, inclusive. And having so lawfully seized all of said property, as aforesaid, said sheriff and tax-collector did proceed to give due legal notice of
26 said seizure to all persons interested in or claiming any title, right, or privilege therein, in the manner required by law, and in due form of law advertised the same for sale at public auction; and after having in all things fully complied with all provisions of the law governing such matters, and having in all respects fully advertized and given notice of the fact of seizure, the time, place, and terms upon which said property would be sold, and by what authority he sold the same, said sheriff and tax-collector, on the 8th day of October, A. D. 1864, at the door of the court-house, in the city of Carrollton, in said parish, at the hour of 12 o'clock m., (that day being the time and place when and where said property was advertised to be sold,) after having an'ounced, in a loud and audible tone of voice, the conditions of said sale to be cash at the time of sale, and that the object of said sale was to satisfy the claims of said State for taxes due by said property, and the owners thereof, for the years 1861, 1862, & 1863, inclusive, did expose and offer for sale to the highest bidder, for cash, all of said property, together with all and singular the rights, appurtenances, and improvements belonging thereto, together with all and all manner of title, privilege, or right whatsoever in and to said property owned or claimed by any person or persons whatsoever.

That, at said sale, one J. Madison Wells, of said parish, became and was the highest bidder for said property, and offered and bid the sum of one hundred dollars therefor, by reason whereof said property, and all the right, title, and interest of all and all manner of persons, including any and all supposed title, property, lien, privilege, mortgage,
27 or hypothecation, of whatever kind, the said plaintiffs or the owner or owners, payee or payees, of said supposed obligation in said petition set forth, was then and there, by said sheriff and *and* tax-collector lawfully adjudicated to the said J. Madison Wells, and then and there became and was the sole property of the said Wells, free and released from any and all liens, privileges, and hypothecation whatever.

That on the day of said sale, in order to furnish the said J. Madison Wells with evidence of his said title to said property, said sheriff and tax-collector, as required by law, made and executed in due form of law and delivered to the said Wells an act of sale, containing the due and proper recitals and statements fully and accurately describing said prop-

erty, and by virtue of his lawful authority conveying said property to the said J. Madison Wells, which said act of sale and conveyance was duly recorded in the office of the recorder of conveyances in and for said parish. That so being the owner of said property as aforesaid, the J. Madison Wells, on or about the 25th day of March, A. D. 1865, for a valuable price and consideration, sold, and, by an act under his hand and signature, in due and legal form, conveyed and transferred to the said defendant all his said title in and to said property and real estate and all improvements thereon, by means whereof said defendant then and there became and was and still is the sole and lawful owner thereof by an indefeasable title free from any and all supposed claim, lien, mortgage, or hypothecation alleged and set forth in said plaintiff's' petition in this cause.

Wherefore, by reasons of the promises, this defendant prays that there be judgment in his favor and against the plaintiffs, with costs,
28 and will ever pray, &c., and for all equitable and general in the premises.

(Signed) J. R. BECKWITH,
" L. MADISON DAY,
Att'ys.

Answer of curator ad hoc.—Filed March 10th, 1868.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

To the honorable the judge of the second judicial district court of Louisiana in and for the parish of Jefferson:

And now into court comes William Mithoff, jr., duly appointed curator ad hoc to represent in these proceedings the absent defendant, Judah P. Benjamin, and for answer to the petition filed and served herein, denies all and singular the facts and allegations in said petition contained. And this curator, further answering, says that on the trial of this cause he will require legal proof of all indebtedness on the part of said absentee. Wherefore he prays that this suit be dismissed at the costs of plaintiffs, and for all such further aid, relief, and remedy as in law and equity said absentee may be entitled to receive. And, as in duty bound he will ever pray, etc., etc.

(Signed) WM. MITHOFF, JR.,
Curator ad hoc.

Extract of minutes.—Thursday, April 30th, 1868.

The court met pursuant to adjournment. Present Hon. C. O. Dugue, judge.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

29 This case, fixed for trial this day, called. (Absent) Campbell' Spofford and Campbell, att'ys for pl'tiff'. J. R. Beckwith & L. Madison Day, def'ts. W'm Mithoff, jr., curator ad hoc.

Plaintiffs not appearing, although duly cited, evidence for defendants taken, and argument of counsel for defendants heard, when at this stage of the proceeding, plaintiff' appearing, and on motion of att'y for plaintiff' and by consent of counsel for defendants, it is ordered that this cause be re-opened, and the evidence adduced by att'y for defendant be withdrawn, and the case continued by preference until Saturday, May 23rd, 1868.

Motion for subpœna duces tecum.—Filed May 21st, 1868.

2d judicial district court, parish of Jefferson.

T. MICON ET AL.
vs.
J. P. & P. BENJAMIN & L. MADISON DAY. } No. 3371.

On motion of Campbell, Spofford & Campbell, of counsel for plaintiffs, & on suggesting to the court that this evidence is necessary for the plaintiff, it is ordered that a subpœna duces tecum do issue to C. G. Bentley, deputy clerk of this court, commanding him to bring into court with him in May 23d, 1868, Saturday, at 11 a. m., all the books, papers, & documents he may have in his possession belonging to John E. Schaffer, late sheriff, parish of Jefferson, in his capacity & position of sheriff.

Parish of Jefferson, La., May 21st, 1868.

(Signed) C. O. DUGUE,
Judge 2d Judicial District, La.

30 *Subpœna duces tecum.—Filed May 22d, 1868.*

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

State of Louisiana, second judicial district court, parish of Jefferson.

The State of Louisiana to C. G. Bentley, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the second judicial district court of Louisiana in and for the parish of Jefferson, to bring into the court on Saturday, May 23rd, 1868, at 10 a. m., all the books, papers, and documents you have in your possession belonging to John E. Schaffer, late sheriff parish of Jefferson, in his capacity & position as sheriff; herein fail not under penalty of law.

Witness the honorable C. O. Dugue, judge of our said court, this 22d day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-second year of the Independence of the United States.

(Signed) H. BIENVENUE, *D'y Clerk.*

Sheriff's return.—Filed May 22d, 1868.

Received 22d May, 1868, and on same day, month, and year, served a copy of the within subpœna duces tecum on C. G. Bentley in person. Returned same day.

(Signed) F. M. SECAID, *D'y Sheriff.*

31 *Evidence.—Filed nunc pro tunc, by order of the court as of May 23rd, 1868. Dec'b'r 12th, 1868.*

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

PLAINTIFFS' EVIDENCE.

Certificate of the death of Mrs. Micon.
Act of mortgage.
Sale by George May.

F. A. CLARKE: Am acquainted with J. P. Benjamin; have known him since 1835. J. P. Benjamin, in the latter part of 1861, resided in Montgomery, Ala., and also was in Richmond, Va., and remained there until some time in the spring of 1865, and subsequently, as I understand, he has resided in England; knows the handwriting of Benjamin. I owned a part of the Rickerville property with Mr. Benjamin. It was always called Rickerville property in common. I know of no other property upon which Mrs. Micon had mortgage, except the Rickerville property. The names of the children of Mrs. Anna Micon are those mentioned in the petition which has been read to the witness. Mrs. Anna Micon is dead; has been dead since 1864 or 1865.
Letter, marked D, filed in evidence.

AUGUSTIN MICON, sworn, says:

Mrs. Anna D. Micon nor her heirs possessed no other mortgage upon the property of Mr. Benjamin except the one sued upon in this suit.
Evidence closed May 23rd, 1863.

32 *Evidence for def d't.*

Offer in evidence—
Document marked "E."
A certified copy of that record of the cause of United States vs. Two Squares of Ground, property of J. P. Benjamin, No. 7981 of the docket of the late dist. court of the United States for the eastern district of La.
Also document marked "F," being a certified copy and extract from the journal and record of the said United States court, introduced to prove the rule of the court.
Document "G," marshal's deed offered in evidence with certificate of the deputy recorder of mortgages attached, proof of signatures being waived.

L. MADISON DAY, being sworn, deposes and says:

Questioned. Will you look at the marshal's deed, marked "G," and state if the certificate of Justin Hotard, deputy recorder of the parish of Jefferson, State of Louisiana, that is now attached to this deed, was so attached at the time the deed was delivered to you by Cuthbert Bullitt, United States marshal?
Answered. It was, and has been at all times since.
Were you in possession of the property described in petition in this case, and also described in the said marshal's deed at the time of the commencement of this suit?
Answered. I was, and have been ever since; held possession of this

property, by virtue of this deed and the proceedings had in the late United States court for the eastern dist. of Louisiana, and the acts of Congress.

Cross-examined:

33 I entered into possession of this property in the fall of 1864 as a tenant of the United States; was put in possession as a tenant of the United States by Mr. Nelson, a sub-agent of Benjamin Flanders, who acted as an agent of U. S. Mr. Nelson was in possession and control of the property as agent of the United States, as witness understood from Mr. Nelson. I paid rent to the United States.

Lease marked "H," filed in evidence.

I paid the sums of money mentioned in endorsement in the lease to Mr. E. Whitamore, who represented himself to be special agent of United States, and who was and acted as agent of the United States. The property was vacant when I took possession of it under the lease; does not know how long it had been vacant. Witness paid rent to the United States until the sale under marshal's deed; held the property in a double capacity. I held it for the U. S. marshal as keeper for the United States marshal when the property was seized in my hands. The notice of seizure was served upon me in December, 1864.

Document "I" filed.

The document marked "I" is the notice I received, & which I obeyed. I rendered obedience by holding possession both as a tenant of the United States and as keeper for the United States marshal, to the exclusion of all persons. I was verbally constituted keeper by the deputy who served the notice upon me, & which was subsequently ratified by Cuthbert Bullitt, United States marshal, when I mentioned the fact to him that I had been constituted keeper by his deputy; have no recollection of ever having procured that notice to be served upon

34 me from the United States dist. att'y; am positive that I did not; was not aware of the fact that Joseph Benjamin ever owned one-half of the property in question, or that any other person had any interest in the property but J. P. Benjamin; was not aware that Mrs. Anna Micon had a mortgage upon that property; had no knowledge of any mortgage existing upon property whatever until the marshal' deed, with a certificate of erasure annexed to said deed, was delivered to me. That was the first intimation that I had that Mrs. Micon had ever had a mortgage upon the property. All that I knew of the death of Mrs. Micon is from what is stated in pl't'ffs' petition. I may or may not have heard of her death, but have no recollection of it.

Re-examined:

Have resided in the parish of Jefferson since the fall of 1864. That I am well acquainted with the parish of Jefferson. There is no such place as Huntsville in the parish of Jefferson.

Questioned. Will you look at the marshal's deed, marked "G," and state if you are familiar with the streets in that locality named in same?

Answered. I am well acquainted with them. They surround the property mentioned in this suit, and which I have been in possession as above stated.

Question. Do those streets surround any other block of land in the parish of Jefferson?

Answered. They do not.

W. H. WILLIAMS, being sworn, deposes and says: That he is the surveyor of the parish of Jefferson. It is about ten years since I was commissioned as surveyor of the parish of Jefferson; am familiar
35 with the towns platted in the parish of Jefferson. There is no town by the name of Huntsville platted in the parish of Jefferson. There is no place or locality in the parish of Jefferson by the name of Huntsville. There is no such place in the parish of Jefferson by the name of Huntsville. There is a place called Hurtsville; there is a place called Rickerville in the parish of Jefferson. These places are platted differently, but they adjoining each other. There is a street in the parish of Jefferson called Nayades street. There is but one street by that name, but this street passes through several villages. There is a street in the parish of Jefferson called Arabella, and I know no other street in the parish by that name. There is a street in the parish of Jefferson called Nashville, and there is no other in the parish by that name. There is a street called Cornelius in the parish of Jefferson, and there is no other in the parish by that name.

Questioned. Do these streets surround a block in Huntsville?

Answered. They do.

Do these four streets form the boundary of any other square or peice of ground in the parish of Jefferson?

Answered. They do not. I do not remember the number of the square they surround.

Cross-examined:

The separate subdivisions of property into streets and squares in this parish are very numerous, each bearing a distinct name. These are platted, and the original plans of the subdivisions are generally found in the offices of notarys. It requires considerable local knowl-
36 edge to be acquainted with the locality of these subdivisions or even their names. Many of the citizens are not acquainted with the localities of these subdivisions. Was not acquainted with Mr. Micon; merely knew him by sight, and do not know whether he was ever a resident of this parish; never knew that Mrs. Micon lived in the parish; do not know whether the children of Mrs. Micon lived in this parish. I have lived here for the last sixteen or seventeen years. Such a person as Mr. Micon could not have lived in the parish within the last ten years without my knowing it. Mrs. Micon and the children may have lived in the parish without my knowledge, but have never known them to have lived in the parish; was not acquainted with the widow or children of Mr. Micon; did not know them by sight.

Rebutting testimony:

There was a square or portion of a square in Rickerville, known as the Micon property. Have no knowledge of the actual ownership of said property.

Document "A."—Filed in evidence May 23d, 1868.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
Office of the Recorder of Births and Deaths:

Be it remembered that, on this day, to wit, the sixteenth of
37 July, in the year of our Lord one thousand eight hundred and

sixty-six, and the ninety-first of the Independence of the United States of America, before me, F. M. Crozat, duly commissioned and sworn recorder of births and deaths in and for the city and parish of Orleans, personally appeared Augustin Micon, a native of New Orleans, residing on Camp street, No. 225, in this city, who hereby declares that Widow William C. Micon, born Anna D. Thompson, a native of Augusta, Georgia, and about fifty-eight years, died on the tenth of May, eighteen hundred and sixty-four, (10th May, 1864,) in the city of Montgomery.

Thus done at New Orleans, in the presence of the aforesaid Augustin Micon, as also in that of Messrs. Paul E. Crozatt & F. M. Crozat, j'r, of this city, witnesses, by me requested so to be, who have hereunto set their hands, together with me, after due reading hereof, the day, month, and year first above written.

(Signed) AUGUSTIN MICON.
PAUL E. CROZAT.
F. M. CROZAT, J'R.
F. M. CROZAT, *Recorder.*

I do hereby certify the foregoing to be a true and faithful copy from original, recorded in book marked No. 1.

In testimony whereof I have set my hand and affixed the seal of my office, at the city of New Orleans, this twenty-third day of May, in the year one thousand eight hundred and sixty-eight, and the ninety-second of the Independence of the United States of America.

(Signed) SEVERIN LATOUC,
Recorder of Births and Deaths.

38 *Document marked B.—Filed Febr'y 21st, 1868.—Filed in evidence May 23rd, 1868.*

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

23rd July, 1858. Mortgage by J. P. and Jos. Benjamin to Mrs. Anna D. Micon.

Recorded in mortgage-office, in book No. 22, folio 62.

Parish of Jefferson, 8th December, 1865.

(Signed) S. PURSELL,
Recorder.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that this day, before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Judah Philip Benjamin, of the city herein, acting as well for himself, in his own individual name, as for and in the name and behalf of Joseph Benjamin, of the parish of Avoyelles, in this State, by virtue of a power of attorney, under private signature, hereinafter mentioned and recited, who declared and acknowledged that he, the said appearer, and his said constituent, are justly & truly indebted unto Mistress Anna Davenport Thompson, widow of the late William C. Micon, of this city, in the full sum of ten thousand dollars, ($10,000,) borrowed money, which amount of capital it is agreed is to be returned by the said borrowers in four years from the date of these presents, and for the use of which it is distinctly understood they are to pay an interest at the rate of eight per centum per annum, to be paid quarterly; that is to

39 say, the sum of two hundred dollars for each and every quarter during the four years aforesaid.

Now, therefore, in consideration of the premises, and in order to secure the full and faithful repayment of said capital as well as the punctual payment of the interest thereon as hereinbefore specified and stipulated, he, the said appearer, moreover declared that he doth by these presents, as well for himself in his own name and behalf as for and in the name and behalf of his said consti'uent, the said Joseph Benjamin, mortgage, affect, and specially hypothecate unto the said Mistress Anna D. Micon, here present and accepting, the following-described property, to wit:

A certain square of ground, together with all the buildings and improvements thereon and appurtenances thereunto belonging, situate in Hurstville, parish of Jefferson, in this State, bounded by Nayades, Arabella, Cornelius, and Nashville streets, and designated by the number "sixty-three," on the original plan of said "Hurstville," drawn by Benjamin Buisson, surveyor, on the 17th March, 1837, and deposited in the office of Edward Barnett, a notary public in this city, according to which plan the said square measures two hundred and forty-three feet four inches front on Nayades street, four hundred and twenty-six feet four inches front on Arabella street, two hundred and forty feet front on Cornelius street, and three hundred and seventy-seven feet eight inches front on Nashville street, which square of ground was acquired by the said mortgagors by purchase from George May, in the
40 proportion of one undivided half each, by an act passed before Theodore O. Stark, a notary public in this city, on the thirtieth day of April, eighteen hundred and fifty-three, and is entirely free from encumbrance, as will appear by reference to the annexed certificate of recorder of mortgages in and for the said parish of Jefferson, bearing even date herewith, except as hereinafter stated.

And the said J. P. Benjamin doth moreover, by these presents, bind and obligate himself and his said constituent not to sell, alienate, nor in anywise encumber the said described property or any part thereof to the prejudice of this mortgage.

And he furthermore declared that his authority to represent the said Joseph Benjamin in the premises is derived from a power of attorney, executed by the latter under private signature, on the 16th April, 1853, and annexed to the act hereinbefore refer'ed to, by which they jointly acquired the said property from the said George May; but that, in addition to the same, he hereby binds himself to cause the present mortgage to be duly and fully ratified and confirmed by his said constituent within ninety days from the date hereof.

And it is hereby declared by the said Mistress Anna D. Micon that the said capital sum of ten thousand dollars, borrowed by the said mortgagors as aforesaid, is the same which she had loaned to John Kruttschnitt, of this city, and to secure which, together with interest thereon, at the rate of eight per cent. per annum, the latter granted a special mortgage in her favor, by an act passed before William Christy, late a notary public in this city, on the twenty-fifth day of August, 1854, on certain real estate in said act described, which capital
41 sum was by and with her consent transferred and paid over to the present mortgagors by the said Kruttschnitt, he having no further use for the same, and wishing to be relieved therefrom; in consideration whereof she, the said Mrs. Anna D. Micon, doth by these presents, exonerate and forever discharge him, the said John Kruttschnitt, from any and all liability whatsoever, for or on account of the said capital sum, and doth moreover cancel, annul, and release the special mort-

gage granted by him in her favor as aforesaid, on three certain lots of ground, together with all the buildings and improvements thereon, situate in the "fourth district" of this city, in the square bounded by Prytania, Nayades, Philip, and Jackson streets, and designated respectively by the numbers eight, nine, and ten, hereby fully authorizing the recorder of mortgages in and for this parish to erase the same from the books of his office.

And here personally appeared and intervened in this presents Hyppolite Griffen, of this city, herein acting as the agent and attorney in fact of Mrs. Nathalie St. Martin of lawful age, and wife of the said J. P Benjamin, by virtue of a power of attorney executed by her in favor of Louis Janin, by an act passed before S. G. Goodrich, United States counsel at Paris, on the eleventh day of July, 1853, and deposited in the office of Theodore Guyol, a notary public in this city, on the fifth day of August, 1853, to which procuration the said Griffen was substituted by the said Janin, by
42 an act passed before P. C. Cuvellier, notary, on the thirteenth day of May, 1854, who declared that, by virtue of the powers in him vested by the said acts of procuration and substitution, he does by these presents, for and in the name of the said Mrs. Benjamin, renounce all the matrimonial, dotal, paraphernal, and other rights, claims, and privileges to which she is or may be entitled in and to the above-described property, whether by virtue of her marriage with her said husband or otherwise, and particularly all the rights, claims, and privileges mentioned and recited in the said act of procuration, with all which he, the said attorney, declares himself well acquainted, the same having been fully explained to him by me, the said notary.

The said property is entirely free from encumbrance as aforesaid, with the exception of a certain special mortgage (recited in the said annexed certificate) granted by the said Joseph Benjamin in favor of Lionel L. Levy, by an act passed before the said Theodore O. Starke, notary, on the thirtieth day of December, 1856, to secure the sum of four thousand dollars, amount of a certain promissory note in said act specified.

And now personally appeared and intervened in these presents the said Lionel L. Levy, who, having taken due and full cognizance of the foregoing mortgage, declared that he hereby consents, and grants priority in favor of the same over the special mortgage granted to him by the said Joseph Benjamin as aforesaid, hereby agreeing that the mortgage hereinbefore granted take precedence of the one in his favor as before mentioned as fully and effectually as if the same had been duly executed and recorded at an anterior period of time. And the said
43 L. L. Levy having produced the said promissory note for the sum of four thousand dollars, secured by and identified with the said mortgage in his favor, I, the said notary, have duly noted thereupon the present priority and precedence by him herein granted.

This done and passed in my office at the said city of New Orleans, in the presence of Charles F. Barry and Arthur V. Fleming, competent witnesses residing in this city, who hereunto sign their names with the said parties, and me, notary, on this twenty-third day of July, A. D. eighteen hundred and fifty eight.

(Original signed)

J. P. BENJAMIN.
L. L. LEVY.
H. GRIFFEN.
ANNA D. MICON.
CHA'S F. BARRY.
A. V. FLEMING.
H. B. CENAS,
Not. Pub.

I, Ernest Eude, a notary public duly commissioned and sworn in and for the parish and city of New Orleans, State of Louisiana, residing in said city, do hereby certify the foregoing act to be a true copy of the original act on file in the notorial records of Hilary Breton Cenas, late a notary public in this parish of Orleans, which are in my possession as custodian thereof.

In testimony whereof I hereunto set my hand and affix my seal of office at the city of New Orleans, this sixth day of December, A. D. 1865, and in the 90th year of the Independence of the United States of America.

(Signed) E. EUDE,
Notary Public, General Custodian of all Notorial Records of persons out of office.

Document marked C.—Filed in evidence, May 23rd, 1868.

44 T. MICON ET ALS. vs. J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Theodore O. Stark, a notary public in and for the city and parish of Orleans, State of Louisiana aforesaid, duly commissioned and qualified, personally came and appeared George May, esq., of this city, unmarried, who declared that, for the consideration and upon the terms and conditions hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign, set over, and deliver, in the proportions hereinafter named, unto George Washington Huntington and Thomas Allen Clarke, of this city, Joseph Benjamin, of the parish of Rapides in this State, and Judah Philip Benjamin, also of this city, the said Joseph Benjamin being herein represented by the said Judah P. Benjamin, by virtue of a power of attorney under private signature, dated 10th April, 1853, and annexed in the margin hereof for reference, present, accepting and purchasing for themselves, their heirs, and assigns, and acknowledging delivery and possession thereof, all and singular ten squares of ground situated in Hurstville, parish of Jefferson, in this State, together with the improvements thereon, rights, privileges, customs, ways, servitudes, appurtenances, &c., thereunto belonging or in anywise appertaining, being designated on the original plan of said Hurstville, drawn by Benjamin Buisson, surveyor,
45 on the 17th March, 1837, and deposited in the office of Edward Barnett, late notary in this city, by the numbers sixty-three, sixty-four, sixty-five, sixty-six, sixty-nine, seventy, seventy-five, seventy-six, seventy-seven, and seventy-eight, in the manner following, viz:

To the said Judah P. Benjamin and Joseph Benjamin each the undivided half part of square No. sixty-three.

To the said George W. Huntington and Thomas A. Clarke, each the undivided half part of square No. sixty-four.

To the said George W. Huntington, Thomas A. Clark, Judah P. Benjamin, and Joseph Benjamin, each, the undivided one-fourth part of squares No.'s sixty-five, sixty-six, sixty-nine, seventy, seventy-five, seventy-six, seventy-seven, and seventy-eight.

Square number sixty-three is bounded by Nayades, Arabella, Cornelius, and Nashville streets, and measures two hundred and forty-three feet four inches front on Nayades street, four hundred and twenty-six

feet four inches front on Arabella street, two hundred and forty feet front on Cornelius street, and three hundred and seventy-seven feet eight inches front on Nashville street.

Square No. sixty-four is bounded by Nayades, Arabella, and Cornelius streets, and the property lately belonging to D. T. Walden, and measures two hundred and forty-three feet four inches front on Nayades street, four hundred and thirty-six feet five inches and three-fifths front on Arabella street, and two hundred and three feet front on Cornelius street, and four hundred and eighty-five feet one and three-fifths inches front on the line of the property of D. T. Walden.

46 Square number sixty-five is bounded by Cornelius, Arabella, and St. Patrick streets, and property lately belonging to D. T. Walden, and measures three hundred feet on Arabella street; two hundred and nineteen feet ten inches front on Cornelius street, and one hundred and ninety-six feet front on St. Patrick street.

Square number sixty-six is bounded by Cornelius street, Arabella, St. Patrick, and Nashville streets, and measures two hundred and forty feet front on Cornelius street, three hundred feet front on both Arabella & Nashville streets, and two hundred and forty feet front on St. Patrick street.

Square number sixty-nine is bounded by St. Patrick, Arabella, St. Dennis, and Nashville streets, and measures two hundred and ten feet on both St. Dennis and St. Patrick streets and three hundred feet on both Arabella and Nashville streets.

Square number seventy-six is bounded by Green, Arabella, and Georges street', and property lately belonging to D. T. Walden, and measures one hundred and thirty-eight feet eight inches front on Green street, three hundred feet front on Arabella street, and one hundred and four feet ten inches front on Georges street.

Square number seventy-seven is bounded by Georges, Arabella, and Long streets, and the line of property lately belonging to Walden, and measures one hundred and two feet eight inches front on Georges street, three hundred feet front on Arabella street, & 77 feet front on Long street.

Square number seventy-eight is bounded by Georges, Arabella, Long, and Nashville streets, and measures two hundred and forty feet

47 on both of Georges and Long streets, and three hundred feet on each of Arabella and Nashville streets.

All of which said ten squares of ground were acquired by the present vendor from Raymond Pochelu, of this city, as per act of sale passed in this office on the 10th March last past, and are entirely free from all mortgages or encumbrances whatsoever, as will appear by reference to the annexed certificate of the recorder of mortgages for the said parish of Jefferson, other than the following, to wit:

First. A general mortgage operating on all of said squares, given by said Pochelu to his vendor, H. Jacobs, as per act, before A. Barnett, notary, on the 22d May, 1832, to secure the payment of four promissory notes drawn by said Pochelu to his own order, and endorsed by himself, each for a like sum of two thousand one hundred dollars, dated 22d May, 1832, and made payable, respectively, in one, two, three, and four years after date, with interest at the rate of six % per annum from date to maturity, and thereafter, if not then paid, at eight % per annum, which said mortgage was assumed by the present vendor in his said act of purchase from said Pochelu.

Second. The mortgage granted by the said vendor, George May, in favor of his vendor, said R. Pochelu, in his said act of purchase, to se-

cure eighteen promissory notes, drawn by said May to his own order and endorsed by himself, dated 3d March, 1833, and bearing interest at the rate of five % per annum, which said mortgage is distributed as follows: Square number sixty-three is mortgaged to secure the payment of three notes for the sum of twelve hundred dollars
48 each, payable, respectively, in three, four, and five years after date; square number sixty-four, to secure the payment of three notes for one thousand dollars each, made payable, respectively, in three, four, and five years after date; square No. sixty-six, to secure the payment of three notes for six hundred dollars each, payable in three, four, and five years after date; square number sixty-five, to secure the payment of three notes for the sum of five hundred dollars each, payable in three, four, and five years after date; squares Nos. sixty-nine, seventy-five, and seventy-eight, to secure the payment of three notes for the sum of four hundred dollars each, payable in three, four, and five years after date, and squares Nos. seventy, seventy-six, and seventy-seven, to secure the payment of three notes, each for the sum of three hundred dollars; in all, eighteen notes:

To have and to hold the said ten squares of ground, in the proportion above stated, unto the said purchasers, their heirs and assigns forever; and the said May, vendor, the said property herein conveyed to the said purchasers, their heirs and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever. And the said vendor does hereby moreover transfer unto the said purchasers all and singular the rights and actions of warranty to which he is or may be entitled, against any and all of the former owners of the properties herein conveyed, hereby subrogating the said purchasers in and to the said rights and actions, to be by them enjoyed and exercised
49 in the same manner as they might have been by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of thirty-two thousand five hundred dollars, ($32,500,) being at the rate of one thousand six hundred and fifty dollars for square No. sixty-three, nine thousand six hundred and fifty dollars for square No. sixty-four, and thirteen thousand two hundred dollars for squares No'. sixty-five, sixty-six, sixty-nine, seventy, seventy-five, seventy-six, seventy-seven, and seventy-eight. In liquidation and full payment of which said sum of $32,500 the said purchasers pay cash, assume and issue notes as follows, to wit:

The said Judah P. Benjamin and Joseph Benjamin, in liquidation of the price fixed on square No. sixty-three, which they have purchased in the proportion of one undivided half each, have paid the sum of two thousand and sixteen dollars sixty-six and two-thirds cash, in ready current money, at the execution of these presents, and for the balance first hereby assume and bind themselves to take up and pay at maturity the three above-described promissory notes for the sum of twelve hundred dollars each, with interest at the rate of five % per annum from date to maturity, and thereafter, if not then paid, at the rate of eight % per annum, drawn by said Geo. May to his own order and endorsed by himself, dated on the 3d March, 1853, and made payable, respectively, in three, four, and five years after date, being secured in their payment by special mortgage on said square No. sixty-three, as per said
50 act of purchase from Pochelu to May, passed in this office on the 10th March last past, which said mortgage is hereby also assumed secured; and for the balance the said purchasers have issued their joint two promissory notes, each for a like sum of two thousand and sixteen

$\frac{65}{100}$ $(\frac{2}{3})$ dollars, drawn to the order of and endorsed by said Judah P. Benjamin, dated this day, and made payable, respectively, in one and two years after date, with interest at the rate of six % per annum from date to maturity, and thereafter, if not then paid, at the rate of eight % per annum, to secure which said two notes at maturity, as well as the interest which may acerue thereon, the said purchasers hereby grant a special mortgage on the within-sold square No. sixty-three, binding themselves not to alienate the same to the prejudice of this mortgage, and which said notes, after having been paraphed by any notary, in order to identify them with this act, was delivered to the said vendor, who hereby acknowledges the receipt thereof, as well as of the said ready money, making, in all, the said sum of $9,650, the valuation price of said square.

The said George Washington Huntington and Thomas Allen Clarke, in liquidation of the price fixed on for square number sixty-four, which they have purchased in the proportions of one undivided half part, each have paid the sum of five hundred and sixteen $\frac{66}{100}(\frac{2}{3})$ dollars, cash, in ready current money, at the execution of these presents; and for the balance first hereby assume and bind themselves to take up and pay at maturity three certain promissory notes drawn by the said George
51 May to his own order & endorsed by himself, each for a like sum of one thousand dollars, dated on the 3d March, 1853, and made payable, respectively, in three, four, and five years after date, with interest at the rate of five % per annum from date to maturity, & thereafter, if not then paid, at the rate of eight % per annum, also the note drawn by said R. Pochelu to his own order, and endorsed by himself, for the sum of twenty-one hundred dollars, dated 22d May, 1852, and made payable in four years after date, with interest at six % per annum from date to maturity, and eventual interest at eight %; all of which said notes are secured by mortgage on said square No. sixty-four, as per acts above referred to, and which said mortgages are hereby assumed as well as the assumption by said May, in his act of purchase from Pochelu, of said mortgage for the note of $2,100. Second, and for the remainder the said purchasers have each executed their two separate promissory notes, drawn respectively to their own orders and endorsed by themselves, each for a like sum of one thousand and eight $\frac{33}{100}(\frac{1}{3})$ dollars, dated this day and made payable, respectively, in one and two years after date, with interest at the rate of six % per annum from date to maturity, and thereafter, if not then paid, at the rate of eight % per annum, to secure the payment of which said four last-described notes at maturity the said purchasers hereby grant a special mortgage on the within-sold square No. sixty-four to their said vendor, promising and binding themselves not to alienate or encumber the same to
52 the prejudice of this mortgage; and which said notes, after having been paraphed by me, notary, in order to identify them with this act, were delivered to the said vendor, who hereby acknowledges the receipt thereof as well as of the said ready money, making, in all, the said sum of $9,650, the valuation price of said square.

And the said George Washington Huntington, Thomas Allen Clarke, Judah P. Benjamin, and Joseph Benjamin, in liquidation of the price fixed on for the remainder of said properties, viz, squares No.s sixty-five, sixty-six, sixty-nine, seventy, seventy-five, seventy-six, seventy-seven, and seventy-eight, have paid the sum of fifteen hundred dollars cash, in ready current money, at the execution of these presents, and for the balance hereby assume and bind themselves to take up and pay at maturity, first, three certain promissory notes, drawn by said R. Pochelu to his own order, and endorsed by himself, each for a like sum of

twenty-one hundred dollars, dated on the 22d May, 1852, and made payable, respectively, in one, two, and three years after date, with interest at the rate of six per cent. per annum from date to maturity, and thereafter, if not then paid, at the rate of eight % per annum, secured by mortgage on the above-named squares, as per said act before A. Barnett, notary, 22d May, 1852, assured with the mortgage by said May in his act of purchase from Pochelu, and which said mortgage and assumption by said May is also hereby assumed; secondly, twelve certain promissory notes, drawn by the said George May to his own order and endorsed by himself, dated on the 3d March, 1853, bearing interest at the
53 rate of five % per annum from date to maturity, and thereafter, if not then paid, at the rate of eight % per annum, and secured by mortgage, as per said act of said sale from Pochleu, passed in this office on the 10th March last past, as follows, viz: three for the sum of six hundred dollars each, payable, respectively, in three, four, & five years after date, secured by mortgage on square No. sixty-six; three notes for the sum of five hundred dollars each, payable, respectively, in three, four, and five years after date, secured by a mortgage on square No. sixty-five; three notes for the sum of four hundred dollars each, payable, respectively, in three, four, and five years after date, secured by mortgage on square No.s sixty-nine, seventy-five, and seventy-eight, and three notes for the sum of three hundred dollars each, payable in three, four, and five years after date, secured by mortgage on squares No.s seventy, seventy-six, and seventy-seven, which said mortgages are also hereby assumed, making, in all, the sum of $13,200, the valuation of said squares sold to said purchasers, as aforesaid, in the proportion of the one undivided fourth part interest each.

Thus done and passed in my office at the city of New Orleans, aforesaid, in the presence of George W. Christy and Edward Allen, witnesses of lawful age and domiciliated in said city, who hereunto sign their names with the said appearers and me, notary, on this 30th day of April, A. D. 1853.

(Original signed) G. W. HUNTINGTON.
By J. P. BENJAMIN.
E. AYLEN.
J. P. BENJAMIN.
THO'S ALLEN CLARKE.
THEO. O. STARKE, *Not. Pub.*
GEORGE MAY.
JO'S BENJAMIN.
GEO. W. CHRISTY.

54 A true copy of the original extract for reference among my notorial record.

New Orleans, May 20th, 1868.
(Signed) T. O. STARK, *Not. Pub.*

Document marked D.—Filed in evidence May 23rd, 1868.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

LONDON, *22d Dec.*, 1865.

MY DEAR GUS.: I have your letter of 23d November, and will answer it as well as my memory will serve me after such rude trials as I have undergone for the last four or five years. All my books and papers,

including the accounts of your father's estate, were seized by Gen'l Butler on the capture of N. Orleans, and I am quite unable to do more than give you imperfect recollections. My impression is that the 799 $\frac{85}{100}$ acres of land of which you speak were transferred at the price of appraisement to Leopold Jeannet, in satisfaction of claims held by him against the estate either on his own account or for his correspondents in France. I remember that Hyppolite Griffen was the lawyer through whom the transfer was made, & I think the act of sale was passed before Theodore Guyol, not. pub. The lot in Laurel street has escaped my memory; but the notes remaining in hand from all the sales of property were transferred to Payne & Harrison, in settlement of their large claim. There is really nothing left of the estate, and the appointment of an executor would be a mere idle waste of money. The claim of Capt. Course and the expenses of your family for a series of
55 years ate up the surplus, which I at one time hoped would remain after paying the Harvey debts. As regards the claim for the money loaned on mortgage on the Rickerville property and arrears of interest on it, I am sorry to say that your only hope of receiving anything must be from ousting Madison Day and receiving the property itself, which ought to be worth more than the amount due on it. I am glad to hear that you are about seriously to resume study. I am doing the same, with the hope of earning a support for my family.

Yours, very truly,
(Signed) J. P. BENJAMIN.

AUGUSTIN MICON, Esq.

Interest is due on mortgage from Jan'y 1st, 1862.

A. MICON, 25 Commercial Place.

Please return.

Document marked E.—Filed in evidence May 23d, 1868, on the trial of this cause.

T. MICON
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

District court of the United States for the eastern district of Louisiana.

UNITED STATES
vs.
TWO SQUARES OF GROUND, PROPERTY OF J. P. Benjamin. } No. 7981.

Be it remembered that in the United States district court for the
56 eastern district of Louisiana, at a regular term thereof begun and holden at New Orleans, in said district, by his honor Edward H. Durell, judge thereof, on the 3d Monday of November, (1864,) in the year of our Lord one thousand eight hundred and sixty-four, and on the twenty-sixth day of January, A. D. 1865, of said term, and in the regular course of proceedings in said court thereafter, the following proceedings in the cause of the United States vs. Two Certain Squares of Ground, the property of Judah P. Benjamin, described as follows: A certain square of ground situate in the town of Hurtsville, parish of Jefferson,

with all the improvements thereon, designated on a plan of said town drawn by B. Buisson, surveyor, on the 17th day of March, 1837, and deposited in the office of E. Barnett, late notary, in New Orleans, by the No. 63, and measuring 243 feet 4 inches front on Nayades street, 426 feet 4 inches front on Arabella street, 240 feet front on Cornelius street, and 377 feet 8 inches front on Nashville street; a certain square of ground in Hurstville, Parish of Jefferson, designated by the No. 45, bounded by Elanore, Perrier, Nashville, and Prytania streets, measuring 300 feet front on Nashville and Elanore streets, and 240 feet front on Prytania and Perrier streets, together with all the improvements thereon; which said cause is numbered 7981, of the docket of said court, were had and taken:

Libel of information.—Filed Jan'y 26th, 1855.

To the Honorable Edward H. Durell, judge of the district court
57 of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America, against the estate, property, money, stocks, credits, and effects hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1. That Cuthbert Bullitt, esqr., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney-General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the seventee'th day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the 23d day of December, in the year one thousand eight hundred and sixty-four, seized as forfeited to the United States, at Hurtsville, parish of Jefferson, within said district and within the jurisdiction of this court, a certain square of ground, situate in the town of Hurtsville, parish of Jefferson, with all the improvements thereon, designated on a plan of said town drawn by B. Buisson, surveyor, on the 17th day of March, 1837, and deposited in the office of E. Barnett, late notary in New Orleans, by the No. 63, and measuring 243 feet 4 inches front
58 on Nayades street, 426 feet 4 inches front on Arabella street, 240 feet front on Cornelius street, & 377 feet 8 inches front on Nashville street; a certain square of ground in Hurtsville, parish of Jefferson, designated by the No. 45, bounded by Elanore, Peroier, Nashville, and Prytania streets, measuring 300 feet front on Nashville and Elanore streets, and 240 feet front on Prytania and Peroier streets, together with all the improvements thereon.

2. That Judan P. Benjamin is and was, on the 17th day of July, 1862, and previously thereto had been, the owner of the above-described property.

3. That certain States, forming a part of the territory and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued and bearing date the first of July, A. D. eighteen hundred and sixty-two,

are now engaged, and were at the time said proclamation was issued, engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

4th. That by the act of Congress of the United States approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States and of other persons, as therein set forth.

5. That the said Judah P. Benjamin, subsequently to the said seventee'th day of July, in the year of our Lord one thousand eight
59 hundred and sixty-two, did act as a cabinet officer of the so-called Confederate States of America, and that, while owning property in a loyal State or Territory of the United States or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

6. That the said Judah P. Benjamin, subsequently to the said seventee'th day of July, in the year of our Lord one thousand eight hundred and sixty-two, did hold an office in the so-called Confederate States of America, after having held an office of trust or profit in the United States, and did hold an office or agency under the government of the so-called Confederate States of America or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to or to support the constitution of the so-called Confederate States.

7th. That the said Judah P. Benjamin, subsequently to the said seventee'th day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation, duly given and made by the President of the United States on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

60 8. That the said Judah P. Benjamin, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation, duly given and made on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

9th. That, by reason of the premises, the property herein described and all the right, title, interest, and estate of the said Judah P. Benjamin herein became and was forfeited to the United States, and *a*ught to be condemned to their use. Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property, and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them, at some early day to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant

such further and other relief as to law and justice may appertain, and as this court is competent to give in the premises, and that, after due proceedings had, the same may be condemned to the United States of America; and he prays for further relief.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

61 Upon which libel of information is the following endorsement:

U. S. district court. United States vs. Two Squares of Ground, &c., property of J. P. Benjamin. No. 7981. Libel of information. Rufus Waples, U. S. attorney. Act of July 17th, 1862. Filed July 26th, 1865. R. Loew, d'y clerk. Condemned March 18th, 1866.

Order of publication.—Issued January 26th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TWO SQUARES OF GROUND, &C., PROPERTY OF J. P. Benjamin. } No. 7981.

Whereas certain property, fully described in the libel filed by the district attorney, and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in any wise appertaining, and all the right, title, and interest of J. P. Benjamin therein, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress, approved on the
62 seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;"

And whereas the United States attorney for the eastern district of Louisiana did, on the 26th day of January, A. D. 1865, file a libel of information in this court, praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them, at some early day, to appear and answer said information:

It is, therefore, on this 26th January, in the year of our Lord one thousand eight hundred and sixty-five, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, *do* appear an' answer this information on the 13th day of February, 1865, and show cause, if any they have, why said property, and real estate, and the right, title, and interest therein of the said J. P. Benjamin, should not be condemned and sold according to law; and that notice be given by pasting a copy of this order upon the front door of the court-house of the district, and by publication in the True Delta newspaper twice a week previous to said 13th day of Feb'uary, A. D. 1865, the first publication to be on or before the 28th January, 1865.

(Signed) E. H. DURRELL, *Judge.*

NEW ORLEANS, *January 26th*, 1865.

63 *Admiralty warrant.—Issued Jan. 26th, 1865.*

The President of the United States of America to the marshal of the eastern district of Louisiana or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and unto your possession take the two squares of ground fully described in the libel filed by the district attorney, and now of record, together with all the buildings and improvements thereon, rights, ways, privileges, an' other hereditaments thereunto belonging, and all the right, title, and interest of J. P. Benjamin therein now libelled by the United States of America for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant, and how you have executed this warrant that you make return according to law.

Witness the honorable Edward H. Durell, judge of said court, at New Orleans, this 26th day of January, 1865, and the 89th year of the Independence of the United States.

[SEAL.] (Signed) W. S. BENEDICT, *D'y Clerk.*

64 *Marshal' return.—Filed Feb'uary 14th, 1865.*

Received January 26th, 1865, and, in obedience to the within warrant, seized and took into my possession the within-described property, posted copies of this warrant, the libel, and order of the judge on the door of the court-house, and published monition in the True Delta, a daily newspaper printed and published in New Orleans on the 27 January & 2, 7, 11 Feb'uary, 1865.

Returned 14th February, 1865.

(Signed) A. BOISBLANC,
D'y U. S. Marshal.

The return on this writ is amended by signing the name of the marshal below the same as follows:

(Signed) CUTHBERT BULLITT,
U. S. Marshal, E. D., La.
By A. BOISBLANC,
D'y U. S. M'l.

NEW ORLEANS, *31st August*, 1866.

Filed Febr'y 14th, '65.

(Signed) R. LEOW, *D'y Clk.*

United States marshal's monition annexed to admiralty warrant and making a part of marshal's return.

United States marshal's monition.

UNITED STATES
vs.
TWO SQUARES OF GROUND, &C., PROPERTY OF J. P. Benjamin. } No. 7981.

In the United States district court eastern district of Louisiana.

In obedience to a warrant issued in this court, to me directed, in the above-entitled suit, I have seized and taken into my possession a certain square of ground situate in the town of Huntsville, parish of Jefferson, with all the improvements thereon designated on a plan of said town, drawn by B. Buisson, surveyor, on the 17th day of March,
65 1837, and deposited in the office of E. Barrett, late notary in New Orleans, by the Nos. 63, and measuring 243 feet 4 inches on Nayades street, 426 feet 4 inches front on Arabella street, 240 feet on Cornelius street, and 377 feet 8 inches on Nashville street; a certain square of ground in Huntsville, parish of Jefferson, designated by the No. 45, bounded by Elanore, Peroier, Nashville, and Prytania streets, measuring 30 feet front on Nashville and Elanore streets and 240 feet front on Prytania and Peroier streets, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of said J. P. Benjamin therein, now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit, now pending in said district court, and I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said property should not be condemned and forfeited to the United States agreeably to the prayer of the libel.

United States marshal's office, New Orleans, 26th day of January, 1865.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Fa. 27, fe. 27.11.

Claim and intervention of J. M. Wells. Filed Feb'uary 13th,
66 1865, was withdrawn by order of court on the 18th day of March, 1865.

Notices to take testimony.—Issued March 13th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
THE PROPERTY OF J. P. BENJAMIN. } No. 7981.

To FIELD, HYMAN & SHAKELFORD, Esq'r's:

You are hereby notified that testimony will be taken in the above-entitled cause on Tuesday, the 14th day of March, 1865, at the clerk's office of this court, at 10 o'clock a. m., on behalf of libellant.

[SEAL.] (Signed) W. S. BENEDICT, *D'y Clerk.*

NEW ORLEANS, *March 13th*, 1865.

Marshal's return.

Received March 13th, 1865, and on the same day, month, and year served a copy of the within notice on Field, Hyman and Shakelford,

esq'rs, by leaving it at their office, in the hands of Shakelford, esq'r, he being one of the firm above mentioned.

(Signed) M. EAGAN,
D'y U. S. Marshal.

MARCH 14TH, 1865.

Notice to take testimony.—Issued March 15th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
THE PROPERTY OF J. P. BENJAMIN. } No. 7981.

67 To FIELD, HYMAN & SHACKELFORD, Esq'rs:

You are hereby notified that testimony will be taken in the above-entitled cause on Friday, the 17th day of March, 1865, at the clerk's office of this court, at 10 o'clock a. m., on behalf of libellant.

[SEAL.] (Signed) W. S. BENEDICT, *D'y Clerk.*

NEW ORLEANS, *March 15th*, 1865.

Marshal's return.

Received March 15th, 1865, and on same day, month, and year served a copy of the within notice on Field, Hyman & Shackelford, in the hands the clerk in their office.

(Signed) M. EAGAN,
D'y U. S. Marshal.

MARCH 16TH, 1865.

Testimony. Filed March 18th, 1865.

Discontinuance of intervenors.—From the minutes of March 18th, 1865.

UNITED STATES
vs.
2 SQUARES OF GROUND, PROPERTY OF J. P. Benjamin. } No. 7981.

On motion of Field, Hyman & Shakelford, attorneys for J. Madison Wells, intervenor in the above-stated case, it is ordered that said intervenor have leave to discontinue & withdraw his intervention in the said case; also leave to withdraw the papers filed by him therein.

Default hearing decree of condemnation.—From the minutes of March 18th, 1865.

UNITED STATES
vs.
2 SQUARES OF GROUND, PROPERTY OF J. P. Benjamin. } No. 7981.

68 The delay allowed by law having expired, and no claim or defence having been filed, on motion of the dis't att'y it is ordered that all persons interested in the property seized be pronounced in con-

tumacy and default, and the libel adjudged and taken pro confesso. And the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons duly entered, and the law and the evidence considered, it is thereupon, on motion of the district attorney, ordered, sentenced, and decreed by the court now here, and his honor, the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree that the two squares of ground, with all the improvements thereon, the property of J. P. Benjamin, fully described in the libel of information on file, be, and they are hereby, condemned as forfeited to the United States. It is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 10th May, 1865, and that upon the return thereof the proceeds be distributed according to law.

Judgment rendered March 18th, 1865.

Judgment signed March 24th, 1865.

(Signed) E. H. DURRELL, *Judge.*

Note of evidence.—Filed March 18th, 1865.

U. S.
vs.
THE PROPERTY OF J. P. BENJAMIN. } No. 7981.

69 The U. S. offered in evidence the admiralty warrant, monition, and marshal's return, and the testimony of the witnesses R. R. Barrow, and J. Gording, taken before C. Claiborne, U. S. com., filed March 14th, '65, and that of R. Loew, filed March 18th, '65. Upon which is the following endorsement:

No. 7981. U. S. vs. Property of J. P. Benjamin. Filed March 18th, 1865. R. Loew, d'y clerk. Note of evidence.

Venditioni exponas.—Issued March 27th, 1865.

United States district court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana or either of his deputies, greeting:

Whereas at a district court of the United States, holden at New Orleans for and within said district, on the 18th day of March, A. D. 1865, two squares of ground, the property of J. P. Benjamin, with all the buildings and improvements thereon, and fully described in the libel on the file, were, after proclamation and due proceedings had, decreed forfeit, and ordered to be sold at public auction: These are, therefore, to command you to sell to the highest bidder at public auction, at Merchants & Auctioneers' Exchange, within said district, on the 4th day of May, 1865, at 12 o'clock m., the said two squares of ground, &c., first giving thirty days' notice at least of the time and place of sale by
70 advertising the same in the Picayune, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale, the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs, and make due return hereof with your doings herein.

Witness the honorable Edward H. Durrell, at New Orleans, this twenty-seventh day of March, A. D. 1865, and 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

Marshal's return.—Filed May 15th, 1865.

United States of America, eastern district of Louisiana.

NEW ORLEANS, *May 15th*, 1865.

Pursuant to this precept, I have caused the property within named to be sold by public auction and to the highest bidder at the Merchants and Auctioneers' Exchange, on the day, hour, and place therein directed, having given thirty days' previous notice of the *true*, place, and manner of the sale in the Picayune, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers wer' as under :

L. M. Day, 2 squares of ground in Hurstville, parish of Jefferson, $6,100.00.

Reference is also made to the certificate of mortgages hereto annexed. Whereby the gross sales amounted to six thousand one hundred dollars cents, which I pay over to C. Claiborne, esq'r, the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BANDONIN,
D'y Marshal.

71 The return of this writ of venditioni exponas is amended by signing the name of the marshal as follows:

CUTHBERT BULLITT,
U. S. Marshal.
By A. BANDONIN,
Chief Deputy.

N. O., 31 *August*, 1866.

Received from Cuthbert Bullitt, United States marshal, six thousand one hundred dollars cents, being (as he saith) the proceeds of the aforegoing sale; the monies to be disposed of as the court directs, and which I have signed duplicate receipts.

[SEAL.] (Signed) R. LOEW, *D'y Clerk.*

NEW ORLEANS, *May 15th*, 1865.

Certificate of mortgages, annexed to the venditioni exponas, making part of the marshal's return.

OFFICE OF MORTGAGES.

The undersigned, parish recorder and ex-officio recorder of mortgages for the parish of Jefferson, State of Louisiana, certifies that, in the records in his office, there are no other mortgages standing in the name of Judah Philip Benjamin, recorded against two squares of ground situated in Hurstville, in this parish, designated by the Nos. 45 & 63, on a plan of said town, drawn by B. Buisson, on the 17th of March, 1837, deposited in the office of E. Barnett, notary—square 63 measures 243 f't 4 inches on Nayades street, 426 f't 4 inches front on Arabella street, 240 f't on Cornelius street, & 377 feet 3 inches front on Nashville street, and square No. 45 measures 300 feet front on each of Nashville and Elanore streets, & 240 feet on each of Peorier and Prytania
72 streets, together with all the buildings and improvements thereon—than the following, to wit:

1°. The drainage-tax on said two squares.

2°. Square 45 is forfeited to the State for the State taxes of 1851, in the sum of $1.89.

3°. Same square forfeited to the State for the tax of 1857, in the sum of $2.62½.

4°. The privilege on square 45 in favor of the police jury, of the parish of Jefferson, left bank, for the tax of 1861, for $4.62½. Book P, No. 1, fo. 461.

5°. The privilege on same square in favor of same police jury for tax of 1862, in the sum of $6.30. B. P. 1, fo. 461.

6°. The privilege in favor of the said police jury on said square for the tax of 1863, for $6.30. B. P. 1, fo. 461.

7°. The privilege on sq. 63 in favor of the said police jury for the tax of 1861, for $25.20. B. P. No. 1, fo. 461.

8°. The privilege on said square in favor of the same police jury for the tax of 1862 for $25.20. B. P. 1, fo. 461.

9°. The privilege in favor of said police jury on said square for tax of 1863, in the sum of $25.20. Book of privileges, No. 1, fo. 461.

9°. The one which by an act passed before A. Mazerean, notary, dated 31st October, 1853, he granted in favor of his vendor on square 45, to secure the payment of a note for fifteen hundred dollars, payable twelve months after date, with 8% per annum interest from maturity till paid. Recorded book 17, fo. 719.

10°. The one which by an act passed before Theo. O. Stark, notary, dated 30th December, 1856, Joseph Benjamin granted in favor of L. L. Levy, on square No. 63, to secure the payment of a note for four thousand dollars, dated 30th December, 1856, payable one year
73 after date, with 8% interest from date. B. 19, fo. 2116.

11°. The one which by an act passed before H. B. Cenas, notary, dated 23d July, 1858, Judah P. and Joseph Benjamin, granted in favor of the widow of William C. Micon, on said square No. 63, to secure the payment of ten thousand dollars, payable four years after date, with interest at the rate of eight per cent. per annum from date till paid; and in a clause in said act the said Levy, holder of the mortgage above recited for four thousand dollars, has agreed that this mortgage should take precedence of the one in his favor. Recorded Book 19, folio 674.

(Signed) JUSTIN HOTARD,
D'y Recorder.

PARISH OF JEFFERSON, *6th of May*, 1865.

U. S. marshal's notices of sale annexed to venditioni exponas, and included in the marshal's return.

UNITED STATES
vs.
2 SQUARES OF GROUND, ETC., PROPERTY OF J. P. Benjamin. } No. 7981.

In the United States district court, eastern district of Louisiana.

By virtue of a writ of venditioni exponas, to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Thursday, May 4th, 1865, at 12 o'clock m., at the Merchants and Auctioneers' Exchange, No. 18 Royal street, the following-described property, viz: A certain square of ground situate in the town of Hurstville, parish of Jefferson, with all the improvements thereon, designated on a plan

of said town, drawn by B. Buisson, surveyor, the 17th day
74 of March, 1837, and deposited in the office of E. Barnett, late notary, in New Orleans, by the 63, and measuring 243 feet 4 inches on Nayades street, 426 feet 4 inches front on Arabella street, 240 feet on Cornelius street, and 377 feet 8 inches on Nashville street; a certain square of ground in Hurstville, parish of Jefferson, designated by the No. 45, bounded by Elanore, Perrier, Nashville, and Prytania streets, measuring 300 feet front on Nashville and Elanore streets, and 240 feet front on Prytania and Perrier streets, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining.

Terms cash, at the time of adjudication, in U. S. Treasury notes.

United States marshal's office, New Orleans, twenty-eighth day of March, 1865.

CUTHBERT BULLITT,
United States Marshal.

M'h 29; Ap. 8, 22; M'y 4.
Filed May 15th, '65.
(Signed) R. LOEW, *D'y Clk.*

Appraiser's bill.

Filed May 13th, 1865.
(Signed) W. S. BENEDICT, *D'y Clerk.*

United States district court. Confiscated property.

APPRAISER'S DEPARTMENT,
New Orleans, May 4th, 1865.

United States vs. *J. P. Benjamin, No.* 7981, *to appraiser's office, Dr.*

(H. G. Heartt & S. L. Hill.)

For examination, appraisement, ascertaining income, etc., $6,100, @ 1 % $61

75 *Marshal's bill. On property of J. P. Benjamin.*

Filed May 16th, 1865.
(Signed) R. LOEW, *D'y Clerk.*

Circuit court of the United States, eastern district of Louisiana.

UNITED STATES MARSHAL' OFFICE,
New Orleans, May 15th, 1865.

UNITED STATES
vs.
TWO SQUARES OF GROUND, PROPERTY OF J. P. Benjamin. } No. 7981.

1864.
Dec'b'r 10. Order of seizure & 3 notices of seizure..... $5 00
1865.
Jan'ry 18. Return on order of seizure..... 1 00
" 26. Ad. warrant, libel & order 6 00

"	"	Pasting, $1; enj. copy, $2	3 "
"	"	Monition published in True Delta	30 "
March	13.	Notice to att'y & 2 sum's, test'y 14	2 50
"	14.	Attendance on U. S. Com'r Claiborne's court	4 00
"	27.	Vend. exp., $2; enj. copy for publication, $1	3 00
"	"	Notice of sale in Picayune	24 00
May	4.	Bill for making 2 plans of property for sale	50 "
"	"	Attendence at sale	10 "
"	"	Comm'r on sale, $82.50; comm'r on disburs't, $9.33	91 83
"	"	3 prol'n, 90; 4 record app., $1	1 90
"	"	Marshal's fees, making 2 deeds of sale	15 00
"	"	Certificate of mortgages and cancellations, p'h Jefferson	12 00
		Marshal's custody to date, 145 d's, 2.50	362 56
		Use of auction-room, Merchants' Exchange	18 00
		Return on vend. exp.	1 00
		Total costs and charges	640 73

76 *Taxation of costs.—From the minutes of May 16th, 1865.*

UNITED STATES
vs.
2 SQUARES OF GROUND, PROPERTY OF J. P. Benjamin. } No. 7981.

It is ordered that the costs and charges in this case be taxed and allowed as follows, viz:

Dist. att'y, 2 %	$122 00
Clerk	65 65
U. S. com'r	10 00
C. Bullitt, marshal	640 73
Appraisers Heartt & Hill	61 "
Registrar, 1 %	$960 38

Decree of distribution.—From the minutes of November 20th, 1865.

UNITED STATES
vs.
2 SQUARES OF GROUND, PROPERTY OF J. P. Benjamin. } No. 7981.

The U. S. marshal having returned into court the writ of venditioni exponas, showing that the libelled property was sold for cash— $6,100.00

It is ordered, adjudged, and decreed that, after deducting the costs taxed, amounting to $960 38
The U. S. direct tax 13 80
The State tax, 1864 ..... 26 25
The parish taxes, parish of Jefferson 141 12
& drainage tax, 2d dist 134 80
——— $1,276 35

The balance *of* be paid into the Treasury of the United States $4,823 65

77 according to law.

(Signed) E. H. DURELL, *Judge.*

DISTRICT OF LOUISIANA, *ss:*

I, Charles Claiborne, clerk of the district court of the United States for the district of Louisiana, and being the lawful custodian of all and singular the records of all the proceedings at any time had and taken in the district court of the United States in and for the late eastern district of Louisiana, and having the same in my possession, do certify that the foregoing 28 pages contain a full, true, and complete transcript and copy of all the proceedings had and taken, as well as of all pleadings and documents filed in the suit of the United States of America vs. Two Squares of Ground, the property of Judah P. Benjamin, and No. 7981, of the docket of the late district court of the United States for the eastern district of Louisiana, with the exception of the depositions of R. R. Barrow, J. Gording, and R. Loew, which appear to have been filed, but cannot be found after due and diligent search, as appears by the records of said court, now lawfully remaining in my possession as clerk of the district court of the United States for the district of Louisiana.

A' witness my hand and the seal of the said district court of the United States for the district of Louisiana, hereunto subscribed, and affixed this 29th day of April, A. D. 1868, at New Orleans.

(Signed) CH'S CLAIBORNE, *Clerk.*

DISTRICT OF LOUISIANA, *ss:*

I, Edward H. Durell, judge of, and holding the district court of the United States for the district of Louisiana, do hereby certify that Charles Claiborne, whose name is subscribed to the foregoing certificate
78 and allegation, is, and was at the date hereof, the lawful clerk of the district court of the United States for the district of Louisiana; that said signature is in the genuine and proper handwriting of said Claiborne, and that the impress of the seal of said court attached to said certificates & allegation, is the impression of the actual & lawful seal of said court; that said Charles Claiborne, by virtue of his said office, is the lawful custodian and keeper of all and singular the records of all, and all manner of proceedings, at any time had or taken in the late district court of the United States for the eastern district of Louisiana, and has the same in his possession; that said attestation and certificate is in due form & by the proper officer, and is entitled to full faith and credit in every court within the United States.

As witness my hand and seal hereinto subscribed and affixed this 29th of April, A. D. 1868, at New Orleans.

(Signed) E. H. DURELL, *Judge.*

DISTRICT OF LOUISIANA, *ss:*

I, Charles Claiborne, clerk of the district court of the United States for the district of Louisiana, do hereby certify that honorable E. H. Durell, whose name is subscribed to the foregoing certificate, is the presiding judge of the said district court of the United States for the district of Louisiana, and is duly commissioned and qualified as such.

As witness my hand and the seal of said court hereunto subscribed and affixed this 29th day of April, A. D. 1868, at New Orleans.

(Signed) CH'S CLAIBORNE, *Clerk.*

79 *Document marked F.—Filed in evidence May 23rd, 1868.*

Be it remembered that a regular term of the district court of the United States for the eastern district of Louisiana, begun and held at the city of New Orleans, on the 3d Monday in February, A. D. 1865, the follow-

ing rule of court relating to and governing cases and proceedings in said court in cases of confiscation, and forfeiture, and property, by virtue of the laws of the United States, was made, ordained, and adopted by the court, and duly entered of record in said court on Saturday, the 18th day of March, A. D. 1865, of said term. Present, the Hon. E. H. Durell, judge of said court.

On motion of Rufus Waples, U. S. attorney, & M. Taylor, esq., attorney for the marshal, on suggesting that it is enacted in the 8th section of the act to suppress insurrections, &c., approved July 17th, 1862, that the several courts aforesaid (the U. S. district courts) shall have power to make such orders, establish such forms, and decree, & sale, & direct such deeds & conveyances to be executed & delivered by the marshal thereof, where real estate shall be the subject of sale, as shall fitly & efficiently effect the purposes of this act & vest the purchasers of such property good & valid titles thereto:

It is ordered that, in all cases where real estate is condemned & sold under the act aforesaid, the marshall shall cause all mortgages resting against the property sold to be cancelled, & shall attach the certificate of the recorder of mortgages to the deeds given to the purchasers showing the cancellation of the same.

80 It is further ordered, that purchasers of property deposit the amount of their bids with the marshal, subject to distribution by the court, after fixing the costs, the State, National, city, and drainage taxes to be paid, the receipts therefor to be attached to the deeds given.

DISTRICT OF LOUISIANA, *ss:*

I, Charles Claiborne, clerk of the district court of the United States for the district of Louisiana, and being the lawful custodian of all and singular the records of all the proceedings at any time had and taken in the late district court of the United States in and for the late eastern district of Louisiana, and having the same in my possession, do certify that the foregoing is a true and correct copy of a rule & order of the said district court of Louisiana, and having the same in my possession, do certify that the foregoing is a true and correct copy of a rule & order of the said district court of the United States for said eastern district of Louisiana, made, ordained, adopted, and entered of record in said court by his Hon. E. H. Durell, judge thereof, on the 18th day of March, A. D. 1865, at, and during a regular term thereof, as appears by the records of said court, now lawfully remaining in my possession, as clerk of the district court of the United States for the district of Louisiana.

As witness my hand and the seal of the said district court of the United States for the district of Louisiana, hereunto subscribed and affixed this 29th day of April, A. D. 1868, at New Orleans.

(Signed) CH'S CLAIBORNE, *Clerk.*

81 DISTRICT OF LOUISIANA, *ss:*

I, Edward H. Durell, judge of, & holding the district court of the United States for the district of Louisiana, do hereby certify that Charles Claiborne, whose name is subscribed to the foregoing certificate and attestation, is, and was, at the date thereof, the lawful clerk of the district court of the United States for the district of Louisiana; that said signature is in the genuine and proper handwriting of said Claiborne, and that the impress of the seal of said court attached to said certificate & attestation is the impression of the actual & lawful seal of said court;

that the said Charles Claiborne, by virtue of his said office, is the lawful custodian and keeper of all and singular the records of all and all manners of proceedings at any time had and taken in the late district court of the United States for the eastern district of Louisiana, and has the same in his possession; that said attestation and certificate is in due form and by the proper officer, and is entitled to full faith and credit in every court within the United States.

As witness my hand and seal hereunto subscribed and affixed this 29th day of April, A. D. 1868, at New Orleans.

(Signed) E. H. DURELL, *Judge.*

DISTRICT OF LOUISIANA, *ss:*

I, Charles Claiborne, clerk of district court of the United States for the district of Louisiana, do hereby certify that honorable E. H. Durell, whose name is subscribed to the foregoing certificate, is the presiding judge of the said district court of the United States for the
82 district of Louisiana, and is duly commissioned and qualified as such.

As witness my hand and the seal of said court hereunto subscribed and affixed this 29th day of April, A. D. 1868, at New Orleans.

(Signed) CHA'S CLAIBORNE, *Clerk.*

Deed of sale marked "G."—Filed in evidence May 23d, 1868.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas J. Cuthbert Bullitt, marshal of the United States for the eastern district of Louisiana, under and by virtue of a venditioni exponas, to me directed by the honorable the district court of the United States for the district aforesaid, in the suit entitled The United States versus Two Squares of Ground, &c., the property of J. P. Benjamin, No. 7981 of the docket of said court, did expose at public sale, according to law, and after all previous legal requisites had been fulfilled and complied with, and after having given full thirty days' notice of said sale in the Picayune, one of the daily newspapers printed and published in the city of New Orleans, viz, on the 29th March, 8th & 22d April, & 4th May, 1865, the following-described property, viz: A certain square of ground situated in the town of Hurtsville, parish of Jefferson, with all the improvements thereon, designated on a plan of said town drawn by B. Buisson, surveyor, the 17th day of March, 1837, and deposited
83 in the office of E. Barnett, late notary in New Orleans, by the No. 63, and measuring 243 feet 4 inches on Nayades street, 426 feet 4 inches front on Arabella street, 240 feet on Cornelius street, and 377 feet 8 inches on Nashville street, on Thursday, the fourth day of May, 1865, in the year one thousand eight hundred and sixty-five, at the hour of twelve o'clock meridian, at the Merchants and Auctioneers' Exchange, No. 18 Royal street, in the city of New Orleans, when, after making due proclamation of said sale, and duly crying the said property and appurtenances, the same were adjudicated to L. Madison Day, he being the last and highest bidder thereon, for the price and sum of fifty-four hundred dollars ($5,400) *dollars* in cash at the time of adjudication, which said sum I hereby acknowledge to have received in ready current money of the United States of America. And it appears, from a duly-certified copy from the records in the office of the recorder of mortgages for the parish of Jefferson, which certificate is annexed to the writ of

venditioni exponas, under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz:

1°. The privilege on square 63 in favor of the said police jury for the tax of 1861, for $25\frac{20}{100}$. B. P. N. 1, fo. 461.

2°. The privilege on said square in favor of the same police jury for the tax of 1862, for $25\frac{20}{100}$. B. P. 1, fo. 461.

3°. The privilege in favor of said police jury on said square for tax of 1863, in the sum of $25\frac{20}{100}$. Book of Privileges No. 1, fo. 461.

84 4°. The one which, by an act passed before Theodore O. Stark, notary, dated 30th December, 1856, Joseph Benjamin granted in favor of L. L. Levy, on square No. 63, to secure the payment of a note for four thousand dollars, dated 30th December, 1856, payable one year after date, with 8 % interest from date. B. 19, fo. 2116.

5°. The one which, by an act passed before H. B. Cenas, notary, dated 23d July, 1858. Judah P. and Joseph Benjamin granted in favor of the widow of William C. Micon on said square No. 63, to secure the payment of ten thousand dollars, payable four years after date, with interest at the rate of eight per cent. per annum from date till paid; and in a clause in said act the said Levy, holder of the mortgage above recited for four thousand dollars, has agreed that this mortgage should take precedence of the one in his favor. Recorded Book 19, folio 674.

STATE OF LOUISIANA, *Parish of Jefferson:*

RECORDER'S OFFICE.

This is to certify that, 1°. The mortgage granted by Joseph Benjamin in favor of L. L. Levy, by an act passed before T. O. Stark, notary, dated 30th December, 1856, on square No. 63, in Hurstville, in this parish, to secure the payment of a note for four thousand dollars, payable one year after date, with 8 % interest per annum from date, recorded B. 19, fo. 2116;

2°. And the one granted by Joseph and Judah P. Benjamin, by an act passed before H. B. Cenas, notary, dated 23d July, 1858, in favor of the widow W'm C. Micon, on said square No. 63, to secure the

85 payment of ten thousand dollars, payable four years after date, with like interest, with a clause giving this mortgage priority or the one above recited, recorded B. 19, fo. 674, have both been this day canceled and annulled from the records in this office.

Parish of Jefferson, 12th May, 1865.

(Signed) JUSTIN HOTARD,
D'y Recorder.

Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises and by virtue of the laws in such case made and provided, and under the authority of the acts of Congress of 6th August, 1861, the 17th July, 1862, and the 3d March, 1863, in relation to confiscation, do hereby sell, transfer, assign, and set over unto the said L. Madison Day as aforesaid, his heirs, administrators, executors, and assigns, all and singular, the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging and in any wise appertaining; to have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., &c., as aforesaid, unto the said L. Madison Day, his heirs and assigns as aforesaid, to his and their proper use, benefit, and behalf forever.

In testimony whereof I grant these presents under my signature as

U. S. marshal aforesaid, in the said city of New Orleans, on this tenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States of America the eighty-ninth.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Executed in presence of—
A. BOISBLANC & G. HOLLAND.

86 United States district court, eastern district of Louisiana, city of New Orleans.

I hereby certify that the foregoing deed of sale has this day been duly recorded in this office in sales-book B, folios 113 & 114.
Clerk's Office, May 13th, 1865.
(Signed) CH'S CLAIBORNE, *Clerk.*

Document marked H.—Filed in evidence May 23d, 1868.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

No. 24. Lease for houses and tenaments only.

Memorandum of an agreement made this first day of Nov., 1864, between E. Whitmore, special agent of the Treasury Department, duly appointed under the acts of Congress, respectively approved March 12th, 1863, and July 2d, 1864, for taking charge of captured and abandoned property, and leasing abandoned and confiscable lands, houses, and tenements in the third special agency, and L. M. Day, of Jefferson City, in the parish of Jefferson, and State of La., witnesseth, that in pursuance of said acts, and of the instructions of the Secretary of the Treasury, the said agent for and in behalf of the United States, agrees, upon the terms hereinafter contained, to lease to the said L. M. Day, from the first day of Nov., 1864, from month to month, either party hereto being at liberty to terminate this lease at the end of any month from the date hereof, the following-described premises: Square ※ 63, Hurtsville, Jefferson P. H., a cottage dwelling. And the said L. M. Day hereby
87 agrees to pay the said agent twenty dollars per month for each month from the date hereof so long as he shall continue in possession of the said premises, and to pay the rent of each month in advance, and at the expiration of this lease as aforesaid to deliver possession of the said property to the said agent, or his successor, in as good condition as the same is now in, loss by fire or other unavoidable injury excepted.

(Signed) E. WHITMORE. [SEAL.]
L. MADISON DAY. [SEAL.]

Signed, seal', and delivered, in presence of—

Received, Carrollton, Nov. 14, 1864, of L. M. Day, ten dollars for rent of dwelling for the month ending Nov. 31st, 1864.
$10.] (Signed) E. WHITMORE,
$10.] *Special Agent.*

Received, New Orleans, 1 Jan'y, 1865, of L. Madison Day, twenty dollars for rent of dwelling for the month ending 31st Dec., 1864. $20.
(Signed) E. WHITMORE, *Legal Ag't.*
" P. S. NELSON.

Received, New Orleans, Jan'y 23d, 1865, of L. Madison Day, twenty dollars for rent of dwelling for the month ending 31st Jan'y, 1865. $20.
(Signed) E. WHITMORE, *Legal Ag't.*
" P. S. NELSON.

Received, New Orleans, March 6th, 1865, of L. Madison Day, twenty dollars for rent of dwelling for the month ending 31st March, 1865. $20.
(Signed) E. WHITMORE, *Legal Ag't.*
88 " P. S. NELSON.

Received, New Orleans, Febr'y 13th, 1865, of L. Madison Day, twenty dollars for rent of dwelling for the month ending Feb'ry 28th, 1865. $20.
(Signed) E. WHITMORE, *Legal Ag't.*
" P. S. NELSON.

Received, New Orleans, April 10th, 1865, of L. Madison Day, twenty dollars for rent of dwelling for the month ending 30th Apr., 1865. $20.
(Signed) E. WHITMORE, *Legal Ag't.*
" P. S. NELSON.

Notice of seizure marked "I."—Filed in evidence May 23d, 1868.

UNITED STATES MARSHAL'S OFFICE,
EASTERN DISTRICT OF LOUISIANA,
New Orleans, December 22d, 1864.

To L. MADISON DAY, Esq'r:

Please take notice that by virtue of an order of seizure from the United States district attorney for the said district, to me directed, I hereby seize in your hands the right, title, interest, and estate of Judah P. Benjamin, in and to the following property, viz:

A certain square of ground situate in the town of Hurtsville, parish of Jefferson, with all the improvements thereon, designated on a plan of said town drawn by B. Buisson, surveyor, dated on the 17th day of March, 1837, and deposited in the office of E. Barnett, late notary
89 public in New Orleans, by the No. 63, and measuring 243 feet 4 inches front on Nayades street, 426 feet 4 inches on Arabella street, 240 feet on Cornelius street, and 377 feet 8 inches front on Nashville street.

(Signed) M. EAGAN,
D'y U. S. Marshal.

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & JO'S BENJAMIN & L. MADISON DAY. } No. 3371.

SATURDAY, *May 23d*, 1868.

Court met pursuant to adjournment—present Hon. C. O. Dugue, judge.

This case, continued to this day for trial, called—Campbell, Spofford & Campbell, att'ys for pl't'ffs; J. R. Beckwith, att'y for def'd't Day; L. M. Day in P. P.; William Mithoff, jr., curator ad hoc.

On motion of Campbell, att'y for pl't'ff', and on showing to the court that the defendant, Jo's Benjamin, had been duly cited, and that the legal delays had expired, it is ordered that there be judgment by default against the said defendant, Jo's Benjamin.

On motion of J. R. Beckwith, att'y for defendant Day, it is ordered by the court that he have leave to withdraw the second defence set up in def't's answer, wherein a tax title is pleaded.

Evidence taken and closed and case continued until 23d June, 1868.

90 *E. E. Norton making himself party hereto. Filed by order of the court, nunc pro tunc, as if May 23d, 1868, Dec'br 12, 1868.*

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

Second judicial district court, parish of Jefferson.

E. E. Norton, assignee in bankruptcy of the estate of Joseph Benjamin, bankrupt, & through his counsel, H. D. Stone, now makes his appearance herein and makes himself a party hereto in the place & stead of Joseph Benjamin, hereby accepting the position of said Joseph in the said case, & ratifying what has been done in the same.

(Signed) H. D. STONE,
Att'y for E. E. Norton, assignee in bankruptcy of Joseph Benjamin, bankrupt.

Evidence.—Filed June 22d, 1868.

T. MICON ET AL.
vs.
J. P. & JO'S BENJAMIN & L. MADISON DAY. } No. 3371.

Note of evidence taken on the confirmation of the judgment by default against Joseph Benjamin, on the 23d May and the 22d of June, 1868.

Pl't'ffs offer in evidence the act of mortgage from J. P. & Jo's Benjamin to Mrs. Anna D. Micon.

Evidence closed June 22d, 1868.

91 (Signed) THO'S L. PRESTON, *D'y Clerk.*

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & JO'S BENJAMIN & L. MADISON DAY. } No. 3371.

MONDAY, *June 22d*, 1868.

Court met pursuant to adjournment—present Hon. C. O. Dugue, judge.

On motion of Micon, att'y for pl't'ff', and considering the law and evidence being in favor of pl't'ffs, it is ordered, adjudged, and decreed that the judgment by default entered herein on the 23d day of May, 1868, against the defendant, Joseph Benjamin, be now confirmed and made final, the plaintiff' having submitted proof of the mortgage and debt therein mentioned, and further proceedings on this judgment are suspended until the determination of the issues between the other parties.

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

TUESDAY, *June 23d*, 1868.

Court met pursuant to adjournment—present Hon. C. O. Dugue, judge.

This case, fixed for trial this day, was by consent of counsel for p'l't'ff' and de'f'd't' continued indefinitely.

92 *Extract of minutes.*

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

SATURDAY, *November 7th*, 1868.

District court met pursuant to adjournment—*D*on. A. Pardee, judge.

The docket of civil causes was called, and on proper motion the following causes were ordered to be fixed as follows:

THOMAS MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

Fixed for December 12th, 1868.

Extract of minutes.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

SATURDAY, *December 12th*, 1868.

District court met pursuant to adjournment—*D*on. A. Pardee, judge.

This case, regularly fixed for trial this day, was called. Present, Campbell & Spofford, of counsel for pl't'ff', Day & Beckwith for defendants.

And on motion of counsel it is agreed that the case be tried, with the consent of all parties, on the evidence taken and the documents in full
93 which were used at the trial of the case during last term of court.

After hearing evidence and arguement of counsel the case was continued till Monday, December 28th, 1868.

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

MONDAY, *December 28th*, 1868.

District court met pursuant to adjournment—*D*on. A. Pardee, judge.

This case, regularly fixed for trial, was this day called. Present,

Campbell & Spofford, attorneys for pl't'ffs, and Day and Beckwith, attorneys for def'd'ts. After hearing evidence and argument of counsel for plaintiffs and defendants the case was continued till to-morrow, Tuesday, December 29th, at 10 o'clock a. m.

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

TUESDAY, *December 28th*, 1868.

District court met pursuant to adjournment—Don. A. Pardee, judge.

This case, continued over from yesterday, was taken up. Present, Campbell and Spofford, counsel for plaintiff', Day and Beckwith appearing for defendants; and pending the arguement of which the case was continued by consent till Saturday, January 2d, 1869.

Extract of minutes.

94 T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

TUESDAY, *December 29th*, 1868.

District court met pursuant to adjournment—Don. A. Pardee, judge.

This case, continued over from yesterday, was taken up. Present, Campbell and Spofford, counsel for plaintiff', Day and Beckwith appearing for defendants; and pending the arguement of which the case was continued by consent till Saturday, January 2d, 1869.

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

SATURDAY, *January 2d*, 1869.

District court met pursuant to adjournment—Don. A. Pardee, judge.

This case, continued from December 29th, 1868, was called up. Present, Campbell & Spofford, for plaintiff', Day & Beckwith for defendants.

After hearing evidence and arguement of counsel, the case was submitted by the parties and taken under advisement by the court, with leave to both parties to file briefs, giving the defendants ten days after service or notice of plaintiffs' brief, both parties consenting that the court may render judgment any time after briefs filed, whether in term-time or vacation.

95 *Opinions and judgment.—Filed March 6th*, 1869.

District court, parish of Jefferson.

HEIRS OF MICON
vs.
J. P. BENJAMIN ET AL. } No. 3371. Reasons and judgment.

This cause, tried and submitted at the last term of this court, is a suit to enforce a mortgage against certain property in the possession of

a third party. The plaintiffs establish their case under their petition, and the question is upon the sufficiency of the defence made by the third possessor. That defence is, that he is a bona-fide holder and purchaser, for value, from the United States, under a decree of condemnation and sale made by the United States district court, in New Orleans, in the case of The United States versus Two Squares of Ground, the property of J. P. Benjamin, under the provisions of an act of Congress approved July 17th, 1862, and known as the confiscation act. And the third possessor relies on that decree of condemnation as a complete bar to plaintiffs' action. There is no dispute of consequence as to the facts. In 1858 two of the defendants, Joseph Benjamin and Judah P. Benjamin, were the owners in possession and of record of the one square of ground involved in this case, and on the 23d day of July of that year they mortgaged and hypothecated the same to Mrs. Anna D. Micon to secure the payment of ten thousand dollars principal and eight per cent. interest, as per contract. The interest was paid, according to contract, up to
96 January 1st, 1862. During the war the property was taken into the possession of the United States Treasury Department as abandoned property. November 14th, 1864, it was leased by the agent of the Treasury Department to L. Madison Day, (one of the defendants in this case.) On the 23d December, 1864, under an order from the U. S. district attorney, the U. S. marshal seized, in the hands of L. Madison Day, the right, title, interest, and estate of Judah P. Benjamin in and to said square, then in possession of Day, serving notice of seizure on him, and thereafter making him keeper for the marshal. Jan'y 26th, 1865, under the confiscation act, proceedings in rem were instituted in the U. S. district court for the eastern district of Louisiana against the aforesaid square of ground and another one as the property of Judah P. Benjamin, being suit No. 7981 of the docket of said court, entitled United States vs. Two Squares of Ground, property of J. P. Benjamin, resulting, March 24th, 1865, in a final decree, adjudging all persons interested in the property seized to be in contumacy and default, and condemning the two squares of ground, with all the improvements thereon, the property of J. P. Benjamin, to be forfeited to the United States. May 4th, 1865, the square aforesaid was sold under a writ of venditioni exponas by the U. S. marshal, and Day became the purchaser, receiving title from the U. S. marshal; and, on the 12th May following, Mrs. Micon's mortgage was erased by the recorder of mortgages under a general rule adopted for such cases by the U. S. district court March 18th, 1865.
97 Mrs. Micon died in 1864, prior to the prosecution of the said confiscation proceedings, and her heirs now bring this suit to enforce her mortgage, and the question arises, are they cut off and concluded by the said decree of condemnation? The power of Congress to pass the confiscation act, under the Constitution, is not denied in this case. It is a well-settled principle of law that the decree or judgment of a court which has jurisdiction of the person and subject-matter is binding until reversed, and cannot be collaterally attacked, and this principle applies as fully to judgments and decrees in rem as to judgments and decrees in personam. We have, then, the limits of inquiry for this case determined, and we proceed to inquire into the jurisdiction of the United States district court in the proceedings aforesaid under the "confiscation act." Section 5 of the act determines what property the President of the United States was to cause to be seized. Section 6 relates to property of persons residing in loyal States aiding the rebellion. Section 7 reads: To secure the condemnation and sale of any of such property after the same shall have been seized, so that it may be made avail-

able for the purpose aforesaid, proceedings in rem shall be instituted in the name of the United States in any district court thereof, or in any territorial court, or in the United States district court for the District of Columbia, within which the property above described, or any part thereof, may be found, or into which the same, if movable, may first be brought, which proceedings shall conform, as nearly as may be, to proceedings in admiralty or revenue cases; and if said property,
98 whether real or personal, shall be found to have belonged to a person engaged in rebellion, or who has given aid or comfort thereto, the same shall be condemned as enemies' property, and becomed the property of the United States, and may be disposed of as the court shall decree, and the proceeds thereof paid into the Treasury of the United States for the purpose aforesaid. Section 8 gives the several courts aforesaid power to make such orders, establish such forms, &c., as may be necessary to vest in purchasers good and valid titles to such property. And section 14 gives the courts of the United States full power to institute proceedings, make orders and decrees, &c., &c., neccessary to carry the act into effect. From these sections it would seem that the jurisdiction of the United States district court, under the "confiscation act," cannot well be disputed, and nothing is left but to determine what, under the law, was condemned in the case of The United States vs. Two Squares of Ground, the property of J. P. Benjamin. The plaintiffs contend that only the right, title, and interest of J. P. Benjamin, whatever that *that* may have been, was condemned. The defendant, Day, claims that the two squares of ground, no matter who owned them, were absolutely condemned. The libel of information filed in the case alleged the offences of J. P. Benjamin, and of him alone, as Benjamin's was the property seized and prosecuted, and for his offences and as his was it condemned. Upon this point the reasoning and authorities of the learned counsel for the plaintiffs are most clear and convincing, and, but for the length of the argument, I would copy it en-
99 tire as a part of this opinion. The question turns upon the construction to be given the seventh section hereinbefore quoted in full. And here I might say that Congress, even if clothed with the power, could have had no intention to confiscate the property of Mrs. Micon, or Joseph Benjamin, or any other person, for the offence or default of J. P. Benjamin. Such a proposition needs no more than a bare statement. The question, rather, is, has Congress authorized such proceedings in order to make available confiscable property as may lead to such inequitable results? Section seven defines the mode of proceeding to secure the condemnation and sale of, and make available, confiscated property. In the construction of this section there is no difficulty, except as to the expressions "proceedings in rem" and "which proceedings shall conform, as near as may be, to proceedings in admiralty or revenue cases."

As to the "proceedings in rem," the general manner of previous confiscations in this country and England has been by acts and bills directed against offenders by name, and nothing was left to be done, but to execute the law, by seizing that property of the offender condemned by the law. Congress, perhaps, doubting its power to proceed so summarily, and probably from the number of the offenders, and the nature of the circumstances, defined the offence and the classes of offenders, declared the forfeiture, and left to the courts to determine judicially the individual offender, each case standing on its own merits. But courts cannot proceed without parties and issues, and the very nature of the case precluded the
100 probability of the courts getting jurisdiction in the ordinary way

and, as the property of the offender was the object, Congress said proceedings in rem shall be instituted in the name of the United States in any district court, &c. Now, it is claimed that the words "in rem" have a well-known legal and technical meaning, and that where they are used in a statute of the United States, and are not therein defined, the well-known legal and technical meaning must be given them. While this may be granted, it is just as necessary that we consider the whole law and the object particularly, when it is stated, of the law-maker, with a view so to construe as to give full effect to the whole. The object of the law-maker was to secure the condemnation of the property of certain persons through a course of judicial proceedings. The deficiency to be supplied was in relation to the courts obtaining jurisdiction. The object of Congress was not to accomplish more than could be done in an ordinary action against the person, but rather was to remedy the inability of obtaining jurisdiction in the ordinary manner. We may also consider that in ordinary legal parlance the words or the expression "proceedings in rem" are used to include numerous kinds of actions—having wide variances as to objects and results—in fact, all actions where possession, actual or implied, of the thing gives jurisdiction.

Attachment-proceedings are commonly called "proceedings in rem," and, in this very case itself, a sort of proceeding in rem, many cases of judgments in attachment have been cited to show the nature, and finality, and conclusiveness of judgments and proceedings "in rem." It was intended by this confiscation act, and the pro-
101 ceedings enforcing the seizures, to confiscate, condemn, and make available all the estate, and property, money, stocks, credits, and effects of the persons coming under the various classes, using terms and language to include all kind' and descriptions of property, movable and i'movable, corporeal and incorporeal. Now, according to the strictly legal and technical signification of "in rem" and "proceedings in rem," there must be a "res," a thing, a visible, material thing to be seized, to be impleaded, to stand in judgment. Applying that strictly technical signification to the seventh section, there are no means of reaching the incorporeal rights of rebels, because an incorporeal right cannot be actually seized, and yet such rights and property were undoubtedly intended to be condemned and made available. Congress intended to confiscate J. P. Benjamin's bills receivable, as well as his land. If this case had been reversed, and Mrs. Micon had been indebted to Benjamin in the sum of ten thousand dollars, secured by mortgage, how could it have been made available by a technical "proceeding in rem?" And as to the expression, which proceedings shall conform as nearly as may be to proceedings in admiralty or revenue cases, this can only relate to the forms of procedure, the pleadings, the notices, the delays; it cannot add to the force or scope of the judgment. Then, with regard to these expressions, we are to consider the results of a claimed construction as affecting the objects and designs of a law. If it had been the object and design of the law, by the expressions under consideration, to give the force of a decree in admi-
102 ralty to the confiscation proceedings against land, provision would have been made by Congress, unless that body had desired to subvert the titles and tenure of real property in the whole country, for notice to those that held liens, incumbrances, and interests in land, either as joint tenants, tenants in common, usufructuaries, lessees, or as owners of estate in remainder, for life, or in expectancy. Congress was well aware of the fact that the commerce and intercourse of the country

had led to investments of capital upon landed security; and that persons interested in such securities resided in Europe, and in every part of the United States. It cannot be imputed to Congress that these interests were to be affected without reasonable notice; and that, too, during a war when access could not always be had to the courts of the country, save through military favor. The delays in admiralty and revenues cases are short fourteen days in revenue. Had it been the interest of Congress to seize land, and conclude all persons interested therein by a judgment "in rem," not only fourteen days, but rather fourteen weeks, or fourteen months would have been given, and given not by implication, not by construction, but by positive enactment. The theory of the technical proceeding "in rem" with regard to notice to parties in interest is that notice is given by the seizure. There is reason, and some appearance of equity in this theory in respect to movable property, but what notice does the mortgagee have by a seizure of the mortgagee' land? The mortgagee, particularly in this State, never is in possession of the mortgaged property, and
103 it is a farce to say that he is bound to know of disturbances in the possession! For these and other reasons, I am of the opinion that section seven must be construed in connection with the rest of the act, and that taking the whole act and the avowed objects of the law-making power, the proceedings in rem, conforming, as near as may be, to proceedings in admiralty or revenue cases, do not have the full force of a technical judgment in rem, and are not conclusive against the whole world, only so far as they keep within the said act and are confined to the estate and property of the person against whom the proceedings are directed; and wherefore I conclude that the United States district court, in the case of "The United States vs. Two Squares of Ground, the property of J. P. Benjamin, under the law and the proceedings therein had, did and could condemn only the estate and property of J. P. Benjamin in and to the said two squares of ground, whatever that estate and property may have been, and that Mrs. Micon's right, under her mortgage, *are* not affected by the said proceedings; and I do not understand that the United States district court intended or pretended to do more than effect J. P. Benjamin's interest in the property, and this notwithstanding the rule regarding the erasure of mortgages.

The first seizure in the case, (and according to L. M. Day's testimony probably the only actual seizure in the case,) was, according to the only evidence we have of it, (the notice filed in this case,) a
104 seizure in the hands of Day, (then in possession of the place,) of all the right, title, interest, and estate of Judah P. Benjamin, in and to a certain square, &c. The libel was exhibited against two squares of ground, the property of J. P. Benjamin, and claimed the forfeiture of the two squares, and all the right, title, interest, and estate of J. P. Benjamin. The order of publication, the admiralty warrant, & the monition are all against the two squares, and the right, title, and interest therein of J. P. Benjamin. The decree is against the two squares, the property of J. P. Benjamin, while the notices attached to the record to take evidence, and to appraisers, &c., are all in the case of the United States vs. The Property of J. P. Benjamin. If the district court had supposed that the proceeding was as strictly "in rem" as a case in admiralty, would not the proceeding have been squarely against the two squares of ground, without reference to J. P. Benjamin or any other person's right, title, and interest? Another view of this case might, perhaps, have been taken, leading substantially to the

same result. Section five of the act requires, as a condition-precedent to any proceedings, a seizure through the President of the United States. There can be no proceeding "in rem" without the court is in possession of the "res," and the court is without jurisdiction to condemn more than it has under seizure and in possession. Prior to the institution of the proceedings in the U. S. court only the right,
105 title, interest, and estate of J. P. Benjamin was seized, and the evidence in the case, including the marshal's return to the admiralty warrant, leaves it very doubtful as to any other seizures having been made. L. M. Day, one of the defendants, testifies in relation to the seizure, as follows: The property was vacant when I took possession of it under the lease. Does not know how long it had been vacant. Witness paid rent to the United States until the sale under marshal's deed. Held the property in a double capacity. I held it for the U. S. marshal, as keeper, when the property was seized in my hands. The notice of seizure was served upon me in December, 1864. The document, marked "I," is the notice received, and which I obeyed. I rendered obedience by holding possession, both as a tenant of the United States, and as keeper for the United States marshal, to the exclusion of all persons. The document marked "I," is a notice of seizure by the marshal, addressed to Day, seizing, in Day's hands, the right, title, interest, and estate of J. P Benjamin in and to, &c. Under this seizure Day says he was appointed keeper for the marshal; and so continued up to the day of sale. If only the right, title, interest, and estate of J. P. Benjamin was seized, no construction of the law would warrant the condemnation of more, and beyond what was seized the court was without jurisdiction. Finding, as I do, for the plaintiffs, it becomes unnecessary to consider the questions raised as to the identity of the property as affected by misdiscription. In this opinion I have cited no
106 authorities in support of any position taken, because the general principles I have adduced are elementary, and the other questions discussed are now raised under a law that, as yet, has not received much construction from the courts. Counsel on each side are entitled to the thanks of the court for the assistance rendered by their industry and research. The briefs filed are masterly, and reflect great credit on their respective authors. As this case has been presented by counsel, if I have arrived at wrong conclusions, I have done it not by the aid of, but in spite of, counsel.

Let judgment be entered for plaintiff' as prayed for.

Judgment.—Filed March 6th, 1869.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

Considering the reasons this day assigned in writing, and considering the law and the evidence to be in favor of the plaintiffs and against the defendants, it is ordered, adjudged, and decreed that the defendants, Judah P. Benjamin and Joseph Benjamin, be condemned in solido to pay the plaintiffs the sum of ten thousand dollars, with interest thereon from Jan'y 1st, 1862, at the rate of eight per cent. per annum, with costs of this suit; and it is further ordered, adjudged, and decreed that the plaintiffs have a lien and privilege on the property described in the petition, in accordance with the said mortgage in
107 said petition described, and that the defendant, L. Madison Day;

surrender and abandon the said property within ten days from the signing hereof, unless he prefer to and does pay the amount of this judgment and costs. Judgment rendered March 6th, 1869, and signed April 1st, 1869.

(Signed) DON A. PARDEE,
Judge 2d Jud'l Dist., La.

Motion for a new trial.—Filed March 10th, 1869.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

On motion of J. R. Beckwith and L. Madison Day, of counsel for said L. Madison Day, one of the defendants in the above-stated case, it is ordered that plaintiffs show cause, on Wednesday, March 17th, at 10 a. m., 1869, why a new trial should not be granted and allowed in said case, on the following grounds:

1st. That the court misapprehended and misapplied the law relating to the character and legal effect of the judgment in rem, pleaded and proved by said defendant Day.

2d. That the court erred in its construction of the act of Congress, by virtue of which the judgment of condemnation & in rem, pleaded by said defendant Day, was rendered.

3d. That the judgment is contary to law and the evidence in the case.

Sheriff's return.—Filed March 12th, 1869.

108 Received March 11th, '69, and on the 12th of same month and year served a copy of the within rule on Mr. Campbell, attorney at law, in person.

Returned same day.

(Signed) P. T. LABARRE, *D'y Sh'ff.*

Extract of minutes.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

WEDNESDAY, *March 17th*, 1869.

District court met pursuant to adjournment, Don A. Pardee, judge.

This case came up on the rule taken herein on Wednesday, March 10th, 1869. Present, L. Madison Day, plaintiff in rule, and William Mithoff, jr., curator ad hoc. When, after hearing arguement of counsel, the rule for a new trial was taken under advisement by the court.

Reasons for refusing a new trial.—Filed March 31st, 1869.

Dist. court, parish of Jefferson.

HEIRS OF MICON
vs.
J. P. BENJAMIN ET AL. } No. 3371. Reasons on rule for new trial.

I have reconsidered this case on the application for a new trial, and I do not arrive at a different conclusion. I think the judgment already

rendered is correct; because, 1st, The seizure mentioned in sec-
109 tion 5 of the confiscation act is a condition-precedent to the jurisdiction of the U. S. courts under the act; and in this case only, the right, title, interest, and estate of J. P. Benjamin was seized. See also 6th and 7th sections as to seizure. 2d. The proceedings authorized in the 7th section are conclusive only as to the interest and estate of the person whose guilt is to be proved, to secure a condemnation, in this case J. P. Benjamin. 3d. In favor of such proceedings as the 3d possessor claims were had in the U. S district court, if conclusive against all the world, (which is denied,) the courts will presume nothing, but will require the strictest conformity to the law, on pain of nullity. The rule for a new trial must be discharged.

Rule for new trial dismissed.—Extract of minutes.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

WEDNESDAY, *March 31st*, 1869.

District court met pursuant to adjournment, Don A. Pardee, judge.

The rule for a new trial taken in this case on the 10th day of March, 1869, tried and taken under consideration on Wednesday, March 17th, 1869, was this day discharged by the court for the reasons on file.

Petition of appeal.—Filed April 10th, 1869.

110 T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

To the honorable the judge of the second judicial district court of the State of Louisiana in and for the parish of Jefferson:

The petition of L. Madison Day, one of the defendants in the case of Thompson Micon, Susan Virginia Micon, widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors and herein represented by their tutor, Augustin Micon, vs. Judah P. Benjamin, Joseph Benjamin, and L. Madison Day, and No. 3371, of the docket of this honorable court; and in which said case E. E. Norton, assignee in bankruptcy of the estate of Joseph Benjamin, a bankrupt, through his counsel made his appearance, and claimed to represent him in the same as said assignee, and made himself a party thereto in the place and stead of the said Joseph Benjamin, and accepted the position of the said Joseph Benjamin in the said case, and ratified what had been done in the case, all of which will more fully, correctly, and at large appear from the record and papers on file in said case, respectfully represents that he believes himself aggrieved by, and verily believes that there is error to his prej-
111 udice in the final judgment rendered against him, Judah P. Benjamin, and Joseph Benjamin, and in favor of said plaintiffs, by this honorable court in said case on the 6th day of March, A. D. 1869, and signed on the 1st day of April, A. D. 1869, and that he desires to take a suspensive appeal from said judgment to the supreme court of the State of Louisiana, in the city of New Orleans, on his complying

with the requisites of the law in such case made and provided. Wherefore, the premises considered, petitioner prays that a suspensive appeal be granted herein from said final judgment rendered against him, Judah P. Benjamin, and Joseph Benjamin, in said case, returnable to the supreme court of the State of Louisiana, in the city of New Orleans, according to law, in his giving bond and security, conditioned as the law directs for costs, and for the amount exceeding by one-half the estimated value of the revenue to be derived from the real estate in controversy in this case pending the suit, and for such further amount, if any, as this honorable court may determine, as surety for any and all injury or deterioration which may be caused to the estate by the appellant while in possession of the same according to law, and in such other sum as may be deemed necessary and proper to be fixed by this honorable court, and that all said parties in interest in the said cause be cited to answer this appeal within the legal delay, and for all equitable and general relief in the premises.

(Signed) J. R. BECKWITH AND
L. MADISON DAY,
112 *Of Counsel.*

Order.

Let a suspensive appeal be allowed in the case of T. Micon et al. vs. J. P. Benjamin et al. No. 3371 of the docket of the 2d judicial district court, parish of Jefferson, in favor of L. Madison Day, as prayed for, on said Day's giving bond, according to law, with good and solvent security, in the sum of three thousand dollars, conditioned as the law directs, and let the said appeal be returnable in the supreme court at New Orleans, on the first Monday in June, 1869. The whole as within prayed for.

Parish of Jefferson, April 10th, 1869.

(Signed) DON A. PARDEE,
Judge 2d Jud'l Dist. Court, Louisiana.

Bond.—Filed April 10th, 1869.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

STATE OF LOUISIANA,
Parish of Jefferson:

Know all men by these presents that we, L. Madison Day, as principle, and John Q. A. Fellowes, as surety, are held and firmly bound unto the clerk of the second judical district court of the State of Louisiana, in and for the parish of Jefferson, William Kern, and his successors in office, and all parties in interest, in the sum of three thousand
113 dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the parish of Jefferson and State of Louisiana, this 10th day of April, A. D. 1869.

Whereas the above-bounden L. Madison Day has this day filed a petition of appeal, and obtained an order thereon, granting a suspensive appeal from a final judgment rendered against him, Judah P. Benjamin, and Joseph Benjamin, on the 6th day of March, A. D. 1869, and signed on the 1st day of April, A. D. 1869, by the honorable the second judicial district court of the State of Louisiana, in and for the parish of Jefferson, in the case

of Thompson Micon, Susan Virginia Micon, widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard Micon, and William H. Micon, the last two being minors, and herein represented by their tutor, Augustin Micon, vs. Judah Philip Benjamin, Joseph Benjamin, and L. Madison Day, and No. 3371 of the docket of said court, and in which the said case, E. E. Norton, assignee in bankruptcy of the estate of Joseph Benjamin, a bankrupt, through his counsel, appeared and claimed to represent him in the same as said assignee, and made himself a party thereto in the place and stead of the said Joseph Benjamin, and accepted the position of the said Joseph Benjamin in said case, and ratified what had been done in the same:

Now the condition of the above obligation is such that the above-bound L. Madison Day shall prosecute his appeal, and shall satisfy
114 whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said surety shall be liable in his place.

(Signed) L. MADISON DAY. [SEAL.]
(") J. Q. A. FELLOWS. [SEAL.]

Delivered in presence of—
J. R. BECKWITH.

Citation of appeal.—Filed April 28th, 1869.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

The State of Louisiana, second judicial district court.

To Mr. JUDAH P. BENJAMIN, through William Mithoff, j'r, his curator ad hoc, greeting:

Whereas L. Madison Day has, on the 10th day of April, 1869, filed in the office of the aforesaid court, a petition of appeal from a certain final judgment lately rendered therein against him, and Judah P. Benjamin, & Joseph Benjamin, and in favor of Thompson Micon et als., which appeal is returnable in the supreme court of the State of Louisiana on the first Monday of June next; you are therefore hereby cited to appear in person, or by attorney, in the said court on the day last aforesaid, to answer to the said appeal.

Witness the Hon. Don A. Pardee, judge of our said court, this
115 27th day of April, in the year of our Lord 1869, & in the 93d year of American Independence.

[SEAL.] (Signed) F. J. LAIZER,
D'y Clerk.

Sheriff's return.—Filed April 28th, 1869.

Received 28th April, 1869, and on the same day served a copy of the within citation of appeal, together with the accompanying copy of petition and order of appeal, personally on William Mithoff, junior, curator ad hoc, representing the absentee, Judah P. Benjamin, one of the defendants herein. Return same day.

(Signed) JOHN JORDAN,
D'y Sheriff, Parish of Jefferson.

The State of Louisiana, parish of Jefferson, second judicial district court.

I, the undersigned, clerk, do hereby certify that the foregoing one hundred and forty-two pages contain a full, correct, and complete transcript of all the documents filed, of all the proceedings had, and of all the evidence adduced in the cause entitled T. Micon et al. vs. J. P. & J. Benjamin, & L. Madison Day, and numbered 3371 of the docket of this hon. court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this seventh day of June, in the year of our Lord eighteen hundred and sixty-nine, and the ninety-third of the Independence of the United States of America.

[SEAL.] (Signed) W. KERN, *Clerk.*

116 Proceedings had in the supreme court of the State of Louisiana, at New Orleans, on the above record, No. 3371.

Foregoing transcript, No. 3371, endorsed as follows: 2301. Supreme court of L'a. Filed June 7th, 1869.

(Signed) M. P. JULIAN,
Dep'y Clerk.

117 *Citations on appeal.*

The State of Louisiana, parish of Jefferson, second judicial district court.

To Mr. THOMPSON MICON, of Mississippi, greeting:

Whereas L. Madison Day has, on this 10th day of April, 1869, filed in the office of the aforesaid court a petition of appeal from a certain final judgment, lately rendered herein against him & Judah P. Benjamin & Joseph Benjamin, and in favor of Thompson Micon et als., which appeal is returnable in the supreme court of the State of Louisiana, on the first Monday of April next; you are therefore hereby cited to appear in person or by attorney in the said court, on the day last aforesaid, to answer to the said appeal.

Witness the honorable Don A. Pardee, judge of our said court, this 27 day of April, in the year of our Lord 1869, and in the 93 year of the American Independence.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) 3371. 2d judicial district court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Beckwith & Day, att'ys.

118 *Sheriff's return.*

Received April 30th, 1869, and on the same day, month, and year, serve copy of the within citation and accompanying copy of petition and order of appeal, personally on John A. Campbell, one of the members of the firm of Campbell, Spofford & Campbell, attorneys of Thompson Micon.

Returned same day.

(Signed) E. GARDETTE, *D'y Sheriff.*

Sheriff's fees, $1.50; m., 10—$1.60.

119 The State of Louisiana, parish of Jefferson, second judicial district court.

To Mrs. SUSAN VIRGINIA MICON, widow of Geo. P. Ring, N. Orleans, greeting:

Whereas L. Madison Day has, on the 10th day of April, filed in the office of the said court a petition of appeal from a certain final judgment rendered in said court against him & Judah P. & J. Benjamin, which appeal is returnable in the supreme court for the State aforesaid on the first Monday of June next; you are therefore hereby cited to appear in person or attorney in the said court, on the day last aforesaid, to answer the said appeal.

Witness the honorable Don A. Pardee, judge of the court aforesaid, this 13 day of April, in the year of our Lord 1869.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) 2d judicial dist. court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Copy of pet., order, & citation of appeal inside, to serve on Mrs. Susan Virginia Micon, widow of George P. Ring.

Sheriff's return.

Received May 1st, 1869, and on the same day, month, and year serve' copy of the within citation and accompanying petition & order
120 of appeal on Mrs. Susan Virginia Micon, widow of George P. Ring, by leaving the same at her domicile on Terpsichore street, between Coliseum and Prytania street', 3 door' from *the* Coliseum street, in the hand of Ma'garet Gill, a person apparently above the age of 14 years, living and residing in said domicile, Mrs. Widow Ring being absent from home at the time of said service; all facts I have learned by interrogation of said Margaret Gill and others.

Returned same day.

(Signed) E. GARDETTE,
D'y Sheriff, Parish of Orleans.

Sh'ff's fee, $1.50; m., 10—$1.60.

Filed June 7th, 1869.

(Signed) M. P. JULIAN, *D'y Clerk.*

121 The State of Louisiana, parish of Jefferson, second judicial district court.

To Mr. AUGUSTIN MICON, N. Orleans, greeting:

Whereas L. Madison Day has, on the 10th day of April, 1869, filed in the office of the aforesaid court a petition of appeal from a certain final judgment, lately rendered therein against him & Judah P. Benjamin & Joseph Benjamin, and in favor of Thompson Micon et al., which appeal is returnable in the supreme court of the State of Louisiana on the first Monday of June next; you are therefore hereby cited to appear in person or by attorney in the said court, on the day last aforesaid, to answer to the said appeal.

Witness the honorable Don A. Pardee, judge of our said court, this 27th day of April, in the year of our Lord 1869, and in the 93 year of *the* American Independence.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) 3371. 2d judicial district court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Beckwith & Day, att'ys. Copy of pet., order, & citation of appeal inside, to
122 serve on Augustin Micon, N. Orleans.

Sheriff's return.

Received April 30th, 1869, and on the same day, month, and year, served copy of the within citation & accompanying petition and order of appeal personally on Augustin Micon.
Returned same day.
(Signed) E. GARDETTE,
D'y Sheriff, Parish of Orleans.

Filed June 7th, 1869.
(Signed) M. P. JULIAN, *D'y Clerk.*

123 The State of Louisiana, parish of Jefferson, second judicial district court.

To Miss WILLIE ANNIE MICON, N. Orleans, greeting:
Whereas L. Madison Day has, on the 10th day of April, filed in the office of said court a petition of appeal from a certain final judgment rendered in the said court against him & Judah P. Benjamin, which appeal is returnable in the supreme court for the State aforesaid on the first Monday of June next; you are therefore hereby cited to appear, in person or attorney, in the said court on the day last aforesaid, to answer the said appeal.
Witness the honorable Don A. Pardee, judge of the court aforesaid, this 13th day of April, in the year of our Lord 1869.
(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) 3371. 2d judicial district court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Copy of pet., order, & citation of appeal inside, to serve on Miss Willie Annie Micon, N. Orleans.

Sheriff's return.

124 Received, May 1st, 1869, and on the same day, month, and year served copy of the within citation and accompanying petition and order of appeal personally on Miss Willie Annie Micon, at her domicil, No. 154 Jackson street. Returned same day.
(Signed) E. GARDETTE, *D'y Sheriff.*

Filed June 7th, 1869.
(Signed) M. P. JULIAN, *D'y Clerk.*

125 The State of Louisiana, parish of Jefferson, second judicial district court.

To WILLIAM H. MICON, thro' his tutor, Augustin Micon, New Orleans, greeting:
Whereas L. Madison Day has, on this 10th day of April, 1869, filed in the office of the aforesaid court a petition of appeal from a certain

final judgment, lately rendered therein against him & Judah P. Benjamin, & Joseph Benjamin, and in favor of Thompson Micon et al., which appeal is returnable in the supreme court of the State of Louisiana on the first Monday of June next; you are therefore hereby cited to appear, in person or by attorney, in the said court on the day last aforesaid, to answer to the said appeal.

Witness the honorable Don A. Pardee, judge of our said court, this 27th day of April, in the year of our Lord 1869, and in the 93 year of *the* American Independence.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) No. 3371. 2d judicial district court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Beck-
126 with & Day, att'ys. Copy of pet., order, and citation of appeal inside, to serve on W'm H. Micon, thro' his tutor, Augustin Micon, N. Orleans.

Sheriff's return.

Filed April 30th, 1869, and on the same day, month, and year, served copy of the within citation and accompanying petition and order of appeal on W'm H. Micon, by leaving the same in the hands of Augustus Micon, tutor of William H. Micon, & who accepted service of the same. Returned same day.

(Signed) E. GARDETTE,
D'y Sheriff, Parish of Orleans.

Filed June 7th, 1869.

(Signed) M. P. JULIAN, *D'y Clerk.*

127 The State of Louisiana, parish of Jefferson, second judicial district court.

To RICHARD W. MICON, thro' his tutor, Augustin Micon, New Orleans, greeting:

Whereas L. Madison Day has, on this 10th day of April, 1869, filed in the office of the aforesaid court a petition of appeal from a certain final judgment lately rendered therein against him & Judah P. Benjamin & Joseph Benjamin, and in favor of Thompson Micon et al., which appeal is returnable in the supreme court of the State of Louisiana on the first Monday of June next; you are therefore hereby cited to appear, in person or by attorney, in the said court on the day last aforesaid, to answer to the said appeal.

Witness the honorable Don A. Pardee, judge of our said court, this 27th day of April, in the year of our Lord 1869, and in the 93 year of *the* American Independence.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) No. 3371. 2d judicial district court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Beckwith & Day, att'ys. Copy of pet., order, and citation of appeal in-
128 side, to serve on Richard W. Micon, thro' his tutor, Augustin Micon, New Orleans.

Sheriff's return.

Filed April 30th, 1869, and on the same day, month, and year, served copy of the within citation and accompanying petition and order of ap-

peal on Richard W. Micon, by leaving the same in the hands of Augustin Micon, tutor of Richard W. Micon, and who accepted service of the same. Returned same day.

(Signed) E. GARDETTE, *D'y Sheriff.*

Filed June 7th, 1869.

(Signed) M. P. JULIAN, *D'y Clerk.*

129 The State of Louisiana, parish of Jefferson, second judicial district court.

To Mr. E. E. NORTON, (N. Orleans,) assignee in bankruptcy of estate of Joseph Benjamin, greeting:

Whereas L. Madison Day has, this 10th day of April, 1869, filed in the office of the aforesaid court a petition of appeal from a certain final judgment lately rendered therein against him & Judah P. Benjamin & Joseph Benjamin, and in favor of Thompson Micon et al., which appeal is returnable in the supreme court of the State of Louisiana on the first Monday of June next; you are therefore hereby cited to appear, in person or by attorney, in the said court, on the day last aforesaid, to answer to the said appeal.

Witness the honorable Don A. Pardee, judge of our said court, this 27th day of April, in the year of our Lord 1869, and in the 93 year of *the* American Independence.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) 3371. 2d judicial district court, parish of Jefferson. T. Micon et als. vs. J. P. & J. Benjamin & L. Madison Day. Beck-
130 with & Day, att'ys. Copy of pet., order, and citation of appeal inside, to serve on E. E. Norton, assignee in bankruptcy of estate of Joseph Benjamin, N. Orleans.

Sheriff's return.

Received April 30th, 1869, and on the same day, month, and year, served a copy of the within citation and accompanying petition and order of appeal personally on E. E. Norton, assignee in bankruptcy of the estate of Joseph Benjamin, bankrupt.

(Signed) E. GARDETTE, *D'y Sheriff.*

Filed June 7th, 1869.

(Signed) M. P. JULIAN, *D'y Clerk.*

131 The State of Louisiana, parish of Jefferson, second judicial district court.

To Mr. JOSEPH BENJAMIN, N. Orleans, greeting:

Whereas L. Madison Day has, on the 10th day of April, filed in the office of the said court a petition of appeal from a certain final judgment rendered in the said court against him & Judah P. & J. Benjamin, which appeal is returnable in the supreme court for the State aforesaid on the first Monday of June next; you are therefore hereby cited to appear, in person or attorney, in the said court, on the day last aforesaid, to answer the said appeal.

Witness the honorable Don A. Pardee, judge of the court aforesaid, this 19th day of April, in the year of our Lord 1869.

(Signed) F. J. LAIZER, *D'y Clerk.*

(Endorsed:) 3371. 2d judicial district court, parish of Jefferson. T Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Pet., order, and citation of appeal inside, to serve on Joseph Benjamin, N. Orleans.

Sheriff's return.

132 Received, April 20th, 1869, and, after due and diligent search and inquiry, I have not been able to find Joseph Benjamin, or any person or agent to represent him, and I have been credibly informed that the same Joseph Benjamin has left the State permanently, and now resides in Honduras, and is engaged in business there, and has not left any person or agent to represent or act for him in Louisiana. Returned same day.

(Signed) E. GARDETTE,
D'y Sheriff, Parish of Orleans.

Filed June 7th, 1869.
(Signed) M. P. JULIAN, *Dep'y Clerk.*

133 To the honorable the judge of the second judicial district court of the State of Louisiana, in and for the parish of Jefferson:

The petition of L. Madison Day, one of the defendants in the case of Thompson Micon, Susan Virginia Micon, widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors, and herein represented by their tutor, Augustin Micon, vs. Judah P. Benjamin, Joseph Benjamin, and L. Madison Day, and No. 3371 of the docket of this honorable court, and in which said case E. E. Norton, assignee in bankruptcy of the estate of Joseph Benjamin, a bankrupt, through his counsel, made his appearance and claimed to represent him in the same as said assignee, and made himself a party thereto in the place and stead of the said Joseph Benjamin, and accepted the position of the said Joseph Benjamin in the said case, and ratified what had been done in the case, all of which will more fully, correctly, and at large appear from the record and papers on file in said case, respectfully represents that he believes himself ag'rieved by, and verily believes that there is error to his prejudice in the final judgment rendered against him, Judah P. Benjamin, and Joseph Benjamin, and in favor of said plaintiffs, by this honorable court in said case, on the 6th day of March, A. D. 1869, and signed on the 1st day of April, A. D. 1869, and that he desires to take a suspensive appeal from said judgment to the supreme court of the State of Louisiana, in the city of New Orleans, on his complying with the requisites of the law in such case made and provided.

134 Wherefore, the premises considered, petitioner prays that a suspensive appeal be granted him from said final judgment rendered against him, Judah P. Benjamin, and Joseph Benjamin, in said case, returnable to the supreme court of the State of Louisiana, in the city of New Orleans, according to law, on his giving bond and security conditioned as the law directs, for costs, and for an amount exceeding by one-half the estimated value of the revenue to be derived from the real estate in controversy in this case pending the suit, and for such further amount, if any, as this honorable court may determine, as surety for any and all injury or deterioration which may be caused to the estate by the appellant while in possession of the same, according to law, and in such other sum as may deemed necessary and proper to be fixed by

this honorable court, and that all said parties in interest in the said cause be cited to answer this appeal within the legal delay, and for all equitable and general relief in the premises.

(Signed) J. R. BECKWITH, AND
L. MADISON DAY,
Of Counsel.

Order.

Let a suspensive appeal be allowed in the case of T. Micon et al. vs. J. P. Benjamin et al. No. 3371 of the docket of the 2d judicial district court, parish of Jefferson, in favor of L. Madison Day, as prayed for, on said Day's giving bond, according to law, with good and solvent security, in the sum of three thousand dollars, conditioned as the law directs; and let the said appeal be returnable in the supreme
135 court, at New Orleans, on the first Monday in June, 1869.

The whole as within prayed for.

Parish of Jefferson, April 10th, 1869.

DON A. PARDEE,
Judge 2d Jud'l Dist. Court, Louisiana.

A true copy.

(Signed) F. J. LAIZER, *D'y Clerk.*

136 *Extract from the minutes of the Supreme Court of Louisiana.*

WEDNESDAY, *November 3d*, 1869.

The court was duly opened; present their honors, James T. Taliaferro, Rufus K. Howell, William W. Howe, associate justices; absent, John T. Ludeling, chief justice; Wm. G. Wyly, associate justice.

T. MICON ET AL.
vs.
J. P. AND J. BENJAMIN, AND L. MADISON DAY. } No. 2301.

On motion of J. R. Beckwith, esq., and L. Madison Day, esq., of counsel for L. Madison Day, one of the defendants and sold appellant in this case, and on suggesting the motion and affidavit now on file in said case, showing that Joseph Benjamin, also a defendant in said case, has not been cited as an appellee herein, because, as appear' from the sheriff's return, on file, he had left the State of Louisiana, and was absent from the same without having left any person or agent to
137 represent him in said State, and on suggesting that said Joseph Benjamin has no attorney of record in said cause, and is now, as appears by said affidavit of L. Madison Day, on file, an absentee and non resident of this State, and has no known agent or person to represent him in the State of Louisiana—

It is ordered by the court that a delay until Monday, Jan'y 3d, 1870, be granted in this case for the purpose of enabling appellant to apply to the district court for the appointment of a curator ad hoc to represent said Joseph Benjamin, and that he may be cited as an appellee herein through said curator, when appointed by the district court, and that the clerk of the district court certify to this court a transcript of all proceedings had in the district court in pursuance of this order.

And it is further ordered that this motion, entered on the minutes of this day, be filed as of yesterday, Tuesday, Nov. 2d, 1869.

138 *Supplementary transcript of the record No.* 3371.

STATE OF LOUISIANA, *Parish of Jefferson:*

Second judicial district court.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN, AND L. MADISON DAY. } No. 3371.

John A. Campbell, esq., att'y for appellee.
J. R. Beckwith & L. Madison Day, for appellant.

Transcript of proceedings in the appointment of a curator ad hoc, returnable in the hon'*th* supreme court of La., on Monday, January 3d, A. D. 1870.

139 To the honorable the judge of the second judicial district court, holding sessions in and for the parish of Jefferson and State of Louisiana:

The petition of L. Madison Day, one of the defendants and sole appellant in the above-stated case, respectfully shows that he alone appealed from the final judgment rendered in said case in favor of plaintiffs and against defendants that Joseph Benjamin was not cited in appeal, because, as appears from the sheriff's return on the citation to him, and returned into the supreme court in said case, he had left the State, and resided in Honduras, and out of the State of Louisiana, without having left any person or agent to represent him in this State; that upon these facts being represented and shown to the supreme court by said return, and supported by the affidavit of petitioner, as well as the transcript of the record, showing that said Joseph Benjamin had appeared in said case, but who had no attorney of record in the same, the supreme court granted a delay in said case, until Monday, the 3rd day of January, 1870, for the purpose of enabling appellant to apply to this honorable court for the appointment of a curator ad hoc, to represent said Joseph Benjamin, and that he might be cited as an appellee in said case in the supreme court, through said curator ad hoc, when appointed, all of which will more fully and correctly appear from the duly authenticated extract from the minutes of the supreme
140 court in said case, herewith filed, marked A, No. 2, and made part of the petition.

Petitioner further represents that said Joseph Benjamin is an absentee, and has been such for a considerable time, and resides in Honduras and out of the State of Louisiana, and that he neither left, nor has he now, any person or agent to represent him in this State, and that a curator is indispensable in this case.

Wherefor' the promises, with the subjoined affidavit, considered, petitioner prays that a curator ad hoc be appointed to represent Joseph Benjamin in this case, and that he may be cited as an appellee in said case, through said curator ad hoc, when appointed, to answer the appeal taken herein to the supreme court, on Monday, January 3d, A. D. 1870, and for all equitable and general relief in the premises.

(Signed) J. R. BECKWITH, &
L. MADISON DAY,
Of Counsel.

Personally appeared before the undersigned authority, L. Madison Day, who, being first duly sworn, doth depose and say that all the facts and allegations contained in the above and foregoing petition are true.
(Signed) L. MADISON DAY.

Sworn to & subscribed before me this 7th day of Dec'r, 1869.
(Signed) WM. KERN, *Clk.*

Document marked A No. 2. Filed December 7th, 1869.

Supreme court of the State of Louisiana.

141 CLERK'S OFFICE, *New Orleans, November 3d*, 1869.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 2301.

On motion of J. R. Beckwith, esq'r., and L. Madison Day, one of the defendants, and sole appellant in this case, and on suggesting the motion & affidavit now on file in said case, showing that Joseph Benjamin, also a defendant in said case, has not been cited as an appellee herein, because, as appears from the sheriff's return on file, he had left the State of Louisiana, & was absent from the same, without having left any person or agent to represent him in said State; and on further suggesting that said Joseph Benjamin has no attorney of record in said cause, and is now, as appears by said affidavit of L. Madison Day, on file, an absentee and non-resident of this State, and has no known agent or person to represent him in the State of Louisiana—

It is ordered by the court that a delay until Monday, January 3d, 1870, be granted in this case for the purpose of *mak*ing appellant to apply to the district court for the appointment of a curator ad hoc, to represent said Joseph Benjamin, and that he may be cited as an appellee herein through said curator when appointed by the district court,

certify to this court a transcript of all proceedings had in the district court in pursuance of this order.

And it is further ordered that this motion, entered on the minutes of this day, be filed as of yesterday, Tuesday, Nov. 2d, 1869.

142 I, the undersigned authority, do hereby certify that the above and foregoing page and a half contains a full, true, and correct extract from the minutes of the supreme court of the State of Louisiana, of the proceedings had in the same, in the case of T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day, and No. 2301 of the docket of said supreme court on the 3d day of November, A. D. 1869.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, this 3rd day of November, A. D. 1869.
(Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court La.

Motion.—Filed Dec'r 7th, 1869.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

On motion of J. R. Beckwith and L. Madison Day, of counsel for said L. Madison Day, and on suggesting and showing by the petition and

affidavit attached to the same, together with the annexed order of the supreme court filed herein by said Day, that a curator ad hoc is necessary to represent Joseph in said case, it is ordered that William Grant, esq., att'y at law, be appointed curator ad hoc to represent said Joseph Benjamin, an absentee and non-resident of the
143 State of Louisiana, in the above-stated case, and that said Joseph Benjamin be cited, through said curator ad hoc, to answer the appeal taken in said case to the supreme court of this State on Monday, the 3d day of January, A. D. 1870, in the city of New Orleans; and that the clerk of this court, in pursuance of and in compliance with the order of the supreme court, make out and certify to the supreme court at New Orleans, a full, true, and complete transcript of all proceedings had in this case in pursuance of the order of said supreme court, and the application herein for the appointment of a curator ad hoc to represent said Joseph Benjamin, an absentee and non-resident of this State.

Notice of appointment—filed Dec'b'r 14th, 1869.

The State of Louisiana, second judicial district court. Parish of Jefferson.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

To W'M GRANT, attorney & counsellor at law.

SIR: Please to take notice that you have been appointed curator ad hoc to represent the absentee, Joseph Benjamin, one of the defendants in the above-entitled cause.

(Signed) F. J. LAIZER, *D'y Clerk.*

Sheriff's return.

Received December 13, 1869. Same day of same month and year
144 served a copy of the within notice of appointment on W'm Grant, att'y at law, in person. Returned same day.

(Signed) ERNEST RICKER, *D'y Sh'ff.*

Acceptance.—Filed December 14th, 1869.

Second judicial district court. Parish of Jefferson.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

And now comes W'm Grant, who has been appointed curator ad hoc to represent Joseph Benjamin, an absentee, and one of the defendants in the above-stated cause, and says that he accepts the said appointment of curator ad hoc herein to represent said Joseph Benjamin, an absentee.

(Signed) W'M GRANT,
Attorney at Law.

State of Louisiana, parish of Jefferson, second judicial district court.

I, the undersigned, clerk of the second judicial district court of Louisiana, in and for the parish of Jefferson, do hereby certify that the fore-

going six and one-half pages contain a full, complete, and correct transcript of all the documents filed, of all the proceedings had, and of all the evidence adduced, in the above & hereinafter stated case,
145 since the order of the supreme court of Louisiana, granting a delay until Monday, January 3d, 1870, for the appointment of a curator ad hoc to represent Joseph Benjamin, an absentee, and one of the defendants in the suit of T. Micon et al. vs. J. P. & J. Benjamin and L. Madison Day, No. 3371 on the docket of this honorable court, and now pending in the supreme court aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, this 22d day of the month of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[SEAL.] (Signed) W. KERN, *Clerk.*

146 Foregoing supplementary transcript No. 3371 endorsed as follows: "2301. Supreme court of La. Filed Dec. 31st, 1869.
("Signed) M. P. JULIAN, *Dep'y Clerk.*"

147 *Answer of W'm Grant, curator ad hoc, to appeal.*

Supreme court of the State of Louisiana.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN AND L. MADISON DAY. } No. 2301.

To the honorable the judges of the supreme court of the State of Louisiana:

Now comes William Grant, duly appointed curator ad hoc herein, to represent Joseph Benjamin, an absentee, in said case, and for answer to the appeal taken herein, says that the judgment in said case, in favor of plaintiffs and against defendants, is correct, and he prays that the same may be affirmed.

(Sig'd) WILLIAM GRANT,
Attorney and Curator ad hoc.

(Endorsed:) No. 2301. Answer of curator ad hoc. Filed December 3d, 1869. (Sig'd) M. P. Julian, dep'y clerk.

148 T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY. } No. 3371.

On motion of J. R. Beckwith and L. Madison Day, of counsel for said L. Madison Day, and on suggesting and showing, by the petition and affidavit attached to the same, together with the annexed order of the supreme court filed herein by said Day, that a curator ad hoc is necessary to represent Joseph in said case, it is ordered that W'm Grant, esq'r, att'y at law, be appointed curator ad hoc, to represent said Joseph Benjamin, an absentee and non-resident of the State of Louisiana, in the above-stated case, and that Joseph Benjamin be cited through said curator ad hoc to answer the appeal taken in said case to the supreme court of this State, on Monday, the 3d day of January, A. D. 1870, in city of New Orleans, and that the clerk of this court, in pursuance of and in compliance with the order of the supreme court, make out and

certify to the supreme court true and complete transcript of all proceedings had in this case, in pursuance of the order of said supreme court and the application herein for the appointment of a curator ad hoc to represent said Joseph Benjamin, an absentee, and non-resident of this State.

A true copy of original.

(Signed) F. J. LAIZER, *D'y Clerk.*

149 (Endorsed:) 3371. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Copy of petition and motion of appointment of a curator ad hoc to represent Joseph Benjamin, an absentee, to serve on W'm Grant, esq'r, appointed curator ad hoc.

Sheriff's return.

Received Dec. 14th, 1869, and on the same day, month, and year, served a copy of the within motion for appointment, with the accompanying copy of the petition, on W'm Grant, in person. Returned 15th Dec., 1869.

(Signed) JOHN JORDAN, *D'y Sheriff.*

Filed Dec. 21st, 1869.

(Signed) M. P. JULIAN, *D'y Clerk.*

150 The State of Louisiana, parish of Jefferson, second judicial district court.

To Mr. W'M GRANT, att'y at law, duly appointed curator ad hoc, to represent Joseph Benjamin, an absentee and non-resident of the State of La., greeting:

Whereas L. Madison Day has on the 10th day of April last, 1869, filed in the office of the said court a petition of appeal from a certain final judgment rendered in the said court against him and J. P. & J. Benjamin, which appeal is returnable in the supreme court of the State aforesaid on the first Monday in June, 1869; but a delay granted by the supreme court to appellant until Monday, January 3d, 1870, for the purpose of enabling said appellant to apply to the hon. court for the appointment of a curator ad hoc to represent the said Joseph Benjamin in this case: You are therefore hereby cited to appear in person or attorney in the said court on the day last aforesaid, to answer the said appeal.

Witness the honorable Don A. Pardee, judge of the court aforesaid, this 8 of December, in the year of our Lord 1869.

(Signed) F. J. LAIZER, *D'y Clerk.*

151 (Endorsed:) 3371. 2d judicial district court, parish of Jefferson. T. Micon et al. vs. J. P. & J. Benjamin & L. Madison Day. Beckwith & Day, att'ys. Copy of pet., order, & citation of appeal inside, to serve on W'm Grant, att'y at law, curator ad hoc, appointed to represent Joseph Benjamin, absentee, and non-resident of the State of La.

Sheriff's return.

Received Dec. 14th, 1869, and on the same day, month, and year, served a copy of the within citation, with the accompanying copy of the

petition and order of appeal, on W'm Grant, att'y at law, and curator ad hoc, representing Joseph Benjamin, absentee, in person. Returned 15th Dec., 1869.

(Signed) JOHN JORDAN, *D'y Sheriff.*

Filed Dec. 21st, 1869.

(Signed) M. P. JULIAN, *D'y Clerk.*

152 *Answer of W'm Mithoff, j'r, curator ad hoc, to appeal to the hon. the supremt court of the State of Louisiana, holding session in the parish of Orleans, State aforesaid.*

THOMPSON MICON ET AL.
vs.
J. P. & J. BENJAMIN AND L. MADISON DAY. } No. 2301.

And now into court comes William Mithoff, junior, duly appointed curator ad hoc to represent and defend the absent defendant, Judah P. Benjamin, in these proceedings, and for answer to the appeal of L. Madson Day, one of the defendants, and sole appellant herein, says that he considers it to the interest of the said Judah P. Benjamin that his debt should be paid out of the property pledged and mortgaged to secure the same: Wherefore he prays that the judgment of the honorable the second judicial district court of Louisiana, parish of Jefferson, be affirmed in so far as the same may be executed against the property mortgaged and pledged as aforesaid. And he prays to be herein dismissed, with costs, and for general relief in the premises.

(Signed) W'M MITHOFF, J'R,
Curator ad hoc.

153 (Endorsed :) 2301. Hon. supreme court, State of Louisiana. T. Micon et al. vs. J. P. & J. Benjamin et al. Answer of curator ad hoc. Filed April 21st, 1870. M. P. Julian, dep'y clerk. W. Mithoff, j'r, att'y.

154 *Plaintiffs' answer to appeal.*

Supreme court of the State of Louisiana.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN & L. MADISON DAY.

In this case the plaintiffs insists that, under the Constitution and laws of the United States, they have a property and right under the mortgage which has been set forth and proved by them, and that the district court of the United States could not divest that right by the decree, sale, and title made to the defendant Day by the marshal, and that notwithstanding that decree, the right, title, and claim under that mortgage is not in point or attend.

J. A. CAMPBELL,
For the Plaintiffs.

(Endorsed :) 2301. Answer. Supreme court. Micon vs. Benjamin. J. A. Campbell, att'y.

Filed April 27th, 1871.

(Signed) T. M'C C. HYMAN, *D'y Clerk.*

155 *Extract from the minutes of the supreme court of Louisiana.*

APRIL 27th, 1871.

The court was duly opened: Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W. W. How, associate justices.

T. MICON ET AL.
vs.
J. P. & J. BENJAMIN AND L. MADISON DAY. } No. 2301.

This case was called for trial, and the usual hour for the adjournment of the court having arrived,

The court ordered the same to be continued to to-morrow, Friday, the 28th inst., for resumption of trial.

156 *Extract from the minutes of the supreme court of Louisiana.*

FRIDAY, *April 28th*, 1871.

The court was duly opened: Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

T. MICON ET ALS.
vs.
J. P. & J. BENJAMIN AND L. MADISON DAY. } No. 2301.

This case was called for resumption of trial from yesterday, Thursday, 27th inst., and having listened to argument from J. A. Campbell, esq., of counsel for the plaintiffs & appellees, and L. Madison Day, esq., on behalf of the defendants, appellants herein,

The court took the same under advisement upon the briefs for both parties and the papers now on file.

157 *Extract from the minutes of the supreme court of Louisiana.*

MONDAY, *December 18th*, 1871.

The court was duly opened pursuant to adjournment: Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W. W. Howe, associate justices.

T. MICON ET AL.
vs.
J. P. AND J. BENJAMIN AND L. MADISON DAY. } No. 2301.

On appeal from the second judicial district court parish of Jefferson. Judgment affirmed.

158 *Opinion of the majority of the court, by Mr. Justice Howell, (Chief Justice Ludeling, and Howe and Wyly, justices, concurring.)*

T. MICON ET AL.
vs.
J. P. BENJAMIN ET AL. } No. 2301.

Appeal from the district court, parish of Jefferson.

This is an hypothecary action, instituted to subject certain property to a mortgage, granted by J. P. and J. Benjamin to plaintiffs' ancestor, in the year 1858. The only defence is made by the third possessor, who claims that he is a bona-fide purchaser for value, without notice, from the United States, under a decree of condemnation and sale, made by the United States district court in New Orleans, in the case of the United States vs. Two Squares of Ground, the property of J. P. Benjamin, under the provisions of the confiscation act of July 17, 1862, (12 Statutes at Large, p. 589,) and which decree of condemnation and sale is relied on as a complete bar to plaintiffs' action.

Passing over the questions relating to the jurisdiction of the United States district court, arising from alleged irregularities in the proceedings and the effect of the decree upon the rights of the alleged joint owner, and conceding the constitutionality of the act of July 17, 1862, to be authoritatively determined by the Supreme Court of the United States, we will direct our attention to the scope and effect of said decree and sale under the terms and provisions of the said act, and on the hypothesis that J. P. Benjamin was the sole owner of the
159 property at the date of the sale.

It is strenuously contended by the third possessor, who is appellant from a judgment in favor of the plaintiffs, that the sale of the marshal vested in him as purchaser a complete title in fee-simple to the whole of the land sold, free of all incumbrance, because in a proceeding in rem it was condemned as enemy's property, and not as the property of an offender against the municipal laws of the United States, and because under a rule of the United States district court, adopted by authority of the confiscation act, all mortgages and incumbrances were cancelled and erased by the marshal; and in support of his position he invokes many authorities relating to the validity and effect of proceedings in rem, in admiralty and revenue cases, and the recent decisions in 11 Wallace, U. S. R., upon the said confiscation act.

We readily grant the correctness and force of the authorities quoted in regard to proceedings in rem, in admiralty and revenue cases, and might admit their application, as claimed, in this class of cases did we not think the interpretation given by the United States Supreme Court in the cases of McVeigh vs. United States, (11 Wal., 266,) and Bigelow vs. Forrest, (9 Wal., 339,) to the said act of Congress, and the joint resolution (No. 63, 12 Stat. at Large, 627) passed in connection therewith, modifies and limits such application to a material extent. In the former case, similar to the one against Benjamin's property, the court held that it was so unlike a proceeding purely in rem, where no claimant is named and none appears until after the final decree or judgment is entered and the case has terminated, that the party whose
160 property is proceeded against is entitled to appear and to contest the charges upon which the forfeiture is claimed, and that his guilt and ownership are fundamental in the case. In the latter case it was held "that the act and resolution are to be construed together, and they admit of no doubt that all which could, under the law, become the property of the United States, or could be sold by virtue of a decree of condemnation and order of sale, was a right to the property seized, terminating with the life of the person for whose act it had been seized, and that the estate acquired by the purchaser at the marshal's sale expired at the date of the death of the said person." The point was plainly and fairly presented on behalf of Bigelow "that the

decree of confiscation in the district court of the United States is conclusive that the entire right, title, interest, and estate of French Forrest was condemned and ordered to be sold, and that, as his interest was a fee-simple, that entire fee-simple was confiscated and sold." But in reply the court says: "Under the act of Congress the district court had no power to order a sale which should confer upon the purchaser rights outlasting the life of French Forrest. Had it done so it would have transcended its jurisdiction. The argument assumes what cannot be admitted, that the decree of the district court established a confiscation reaching beyond the life of French Forrest, for whose offence the land was condemned and sold.

Taking those decisions as authority binding on us in the interpretation and construction of the legislation of Congress on this particular subject, we must conclude that the purchaser in this instance
161 acquired only a right to the property sold, which is to terminate with the life of Benjamin, for whose act it was confiscated, and we think it follows as a legal consequence that the mortgage granted by him prior to the passage of the confiscation act was in no manner effected or impaired by the sale. The law itself makes no provision for the extinguishment of mortgages on real property. It makes no references whatever to the subject of mortgages, and as it authorizes the sale of only a life interest in the real estate, and not the property in fee-simple, which is the subject of the mortgage, it seems clear that the mortgage still exists on the property unimpaired. "The mortgage is a real right on the property, bound for the discharge of the obligation," (R. C. C., 3282,) and is extinguished only in the modes prescribed by law, or the consent of the parties.

In some instances especially provided by law, when mortgaged property is sold for specific purposes, and under certain formalities, the mortgage attaches to the proceeds, and the property passes to the purchaser free. But this result is expressly provided for and declared by special enactment, and only in regard to mortgages created after the law is enacted. Hence we are not likely to presume that a law is intended to work such a result, when such intention is not clearly expressed. But this principle does not apply in this case, for the statutes do*es* not so direct, and the property in full ownership was not sold under its provisions, but in imperfect ownership—the life interest of the mortgagor, his use, enjoyment, and dominion thereof for life, without injury to the rights of those who had real rights to exercise thereon. Nor
162 can it be successfully asserted that the mortgage was extinguished by reason of the proceeding being one purely in rem, and thus conveying a title good against all the world, because, according to the doctrine in Bigelow vs. Forrest, no such title was conferred.

The title acquired by the purchaser is not good against the heirs of Benjamin, and it cannot be pretended that had he died soon after the sale his heirs would have taken the property free of the mortgage which he had imposed on it. It was never contemplated that the confiscation of an enemy's property should operate the extinguishment of his obligations and transmit his property to his heirs in a better condition than he himself could have done. No construction of the act of Congress which works such results can be accepted. The estate acquired by the appellant may be assimilated to the usufruct under our system of laws by which the property in usufruct passes to the usufructuary with all the burdens imposed by the owner. (R. C. C., 557, 582, 583.) If it be an estate for life, as known to the common law, the mortgage created by the original owner still exists, and the tenant for life—the life of

Benjamin—is in no better condition under the confiscation law than if Benjamin had voluntarily put him in the position in which the United States have put him. Under this system the rule is that the tenant for life shall keep down the interest due upon mortgages and other incumbrances, though he is not bound to pay off the principal. (Bissett on Estates for Life, 273; 4 Kent, sections 73 to 75.) This implies, of course, the existence of the mortgages. Again it is said: "If
163 the estate is sold to discharge incumbrances, the income of the surplus beyond what is necessary to discharge the incumbrances is to go to the tenant for life—during his life—and upon his death the capital is to be paid over to the remainder-man or reversioner." (Bissett on Estates for Life, 274.) Here the right of mortgagee to sell the property held as a life estate in order to pay off his mortgage is clearly recognized.

It is, however, unnecessary for us to determine precisely the nature, character, and conditions of the estate conveyed to the purchaser under this act of Congress. It is sufficient to know that a complete, absolute, indefeasible title was not conveyed, and that without such, and without some express provision or direction in the law, or some necessary effect in the judicial proceedings for the removal of the real right resting on and inhering in the property itself, the mortgage, which was duly recorded, is not invalidated.

The authority granted in the act to the United States district court, to make such orders and establish such forms of decrees of sale, and direct such deeds and conveyances to be executed, where real estate shall be the subject of sale, as shall fitly and efficiently effect the purposes of the act, and vest in the purchaser good and valid titles, does not, under the limitation contained in the joint resolution, extend to the removal of incumbrances on the property, for the plain reason that it was not the purpose of the act, under said limitation, to sell that part of the estate, the fee-simple which was effected by the mortgage; and hence the act of the marshal in removing the mortgage was ineffectual.

164 But it is argued that the case of Bigelow vs. Forrest is overruled by the later cases of Miller vs. United States, *U.* W. 268, and Tyler vs. Defrees, ib., 331. In this we are not prepared to concur. An examination of these several cases is necessary to ascertain what was decided in each, and it will, we think, be apparent that they do not conflict.

In the first case, Douglass Forrest, the defendant in error, was the sole heir of his father, French Forrest, whose property—real estate—had been confiscated, and he was claiming, in an action of ejectment, the property from Bigelow, the vendee of the purchaser at the marshal's sale. The parties were such as necessarily and appropriately to raise the question as to the nature and quantity of the real estate conveyed by the confiscation sale, and to determine the purview of the act and joint resolution in this regard. In the discussion of the question, the court referred to the history of the joint resolution and the constitutional difficulty suggested by the President, which it was intended to obviate, and held that its legal effect was to restrict the operation of the act to the sale of only a life interest in real estate seized under its provisions. The court deliberately declared that under the said "act of Congress the district court had no power to order a sale which should confer upon the purchaser rights outlasting the life of French Forrest. Had it done so it would have transcended its jurisdiction." And the judgment restoring the property to the heir was affirmed by a unanimous court.

165 The case of Miller was a proceeding under the act of August 6, 1861, and the above-mentioned act of 17th July, 1862, to confiscate personal property, and consequently the question in the Bigelow case, in regard to real estate, could not and did not arise. The questions raised and discussed related to the jurisdiction, sufficiency of proof, necessity of trial by jury, and the constitutionality of the acts of Congress under which the proceedings then before the court for the confiscation of Miller's property were had, and they were all decided by a majority of the court in favor of the United States. The contest, apart from the mode of procedure, was in regard to the right to confiscate the property, and not to its restoration after confiscation; to the constitutional power of Congress to confiscate the property of offenders as a punishment for crime, it being contended that the purpose of the act of 1862 to punish offences against the sovereignty of the United States, and that it is in conflict with the fifth and sixth amendments to the Constitution, which require a finding by a grand jury and a speedy trial by a jury in the State and district wherein the crime shall have been committed. The court held that in this respect the act had two distinct purposes, to wit, to provide, first, as it did in the first four sections, for the punishment of treason, inciting or engaging in rebellion or insurrection, or giving aid and comfort thereto, which was an exercise of the sovereign, and not the belligerent rights of the Government; and, secondly, in the subsequent sections, which have in view a state 166 of public war, for the seizure and sale of the property of public enemies, which was the exercise of the war-power of Congress, to which there is no restriction in the Constitution. It was declared that those engaged in the rebellion were enemies as well as offenders, and that, without reference to their liability to punishment for crime, their property could be seized as enemies' property under the conceded right of the Government to confiscate the property of all public enemies. As to what this right is, the court say: "It may be remarked that it has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him. The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent, a relation in which it has been brought in consequence of its ownership. It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property." The case of the Venus, 8 Cranch, 253, is quoted as establishing this doctrine. This and much more is said arguendo, to maintain the constitutional right of Congress, under the war-power, to confiscate the property of all enemies, including the inhabitants of the insurgent States, but not to determine to what extent that power had been exerted in the confiscation of real estate. That point has been settled in the Bigelow case, and was not in the case then before the court, and was not alluded to in the opinion of the court or the dissenting opinions. Nor is there anything in the whole case, as we understand it, inconsistent with the reasoning and decision in the Bigelow case on the point as to the limitation on the power of the court to sell real estate.

It is well to remark, further, that the opinion of the court, in 167 each of these two cases, was delivered by the same justice, and it can hardly be imagined that, under the circumstances, the earlier case would have been deliberately overruled without some allusion to the fact, or that it could have been overruled by mere inadvertence.

The case of Tyler was an action of ejectment, instituted by the party

himself, whose real property had been confiscated, to recover it from the vendee of the purchaser at the marshal's sale; and here again the question of fee-simple or life estate was not involved or referred to. The proceedings as to Tyler were final and conclusive, just as they are in the Benjamin case as to him, and it can make no practical difference to either, whether it was his fee-simple or his life estate which was seized and sold, and hence the point was irrelevant. The doctrine in the Miller case was affirmed and held to govern the case of Tyler, the principal question being a jurisdictional one, growing out of the mode of seizing real estate. In this case also there was a dissenting opinion, and no allusion whatever was made in either of the opinions to the Bigelow case or the main question decided in it.

Until deliberately overruled, we must accept the Bigelow case as the law on the question material to the case at bar. The question there, as now, was not what Congress might have done in the way of confiscating enemies' property, but what Congress actually did. We may concede that, under the war-power, Congress had the right to order the seizure and sale of the fee-simple of all enemies' real estate; but it by no means follows that Congress has done so in the act of July 17th, 1862.

168 On the contrary, as construed by the United States Supreme Court, the language of the joint resolution, by which Congress chose to limit the operation of the act, clearly refers to and controls the whole act. It does not refer merely to the punishment of offenders, for it says "punishment or proceedings under said act." It does not refer merely to the first four sections, for it speaks of the act as a whole. We are constrained, therefore, to conclude that the sale made by the marshal, under the order of the United States district court, did not vest in the purchaser a fee-simple title to the land in question, and did not extinguish the mortgage existing on it at the time, and that the plaintiffs have established the legal right to enforce their mortgage upon said property in his hands.

Judgment affirmed.

169 *Dissenting Opinion of Mr. Justice Taliaferro.*

I dissent from the opinion of the majority of the court for the following reasons:

The act of Congress of July 17, 1862, was enacted for several purposes, and embraces different and distinct objects. Among these objects, two are prominent: First, to punish treason and rebellion; second, to seize and confiscate the property of rebels.

The first three sections declare the punishment to be inflicted upon persons convicted of treason against the United States, or of inciting, assisting, or engaging in rebellion against the United States. Persons convicted of either of these offenses incur pains and penalties that are to affect them personally. In the case of treason they are to suffer death or imprisonment not less than five years, at the discretion of the court, to be fined not less than ten thousand dollars, and to be deprived of the ownership of slaves, if they own any, the fine to be levied and collected on any or all of the property, real and personal, excluding slaves. In the case of inciting to rebellion, or aiding or assisting therein, etc., imprisonment not to exceed ten years, a fine not exceeding ten thousand dollars, liberation of slaves, if owning slaves, etc., at the discretion of the court. In either case, the person convicted to be forever incapable of holding any office under the United States. Let it be observed that the provisions of these three sections of the act apply to any and all persons without distinction.

The fourth section has no immediate bearing on the subject of
170 the penalties prescribed for offenses under the act.

The fifth section makes it the duty of the President of the United States to cause the seizure of all the estate, property, etc., of every kind, of certain persons designated therein in six different classes, and to apply and use the same, and the proceeds thereof, for the support of the Army of the United States.

The succeeding sections provide the mode by which the provisions of the fifth section shall be carried out. The proceedings are to be in rem; the courts to be vested with power to make such orders, establish such forms of decree and sale, and direct such deeds and conveyances, where real estate is sold, as shall vest in the purchasers of such property good and valid titles.

Here, then, we have by this fifth section an entirely different purpose of the legislator. He does not appear here as the avenger of wrongs, nor does he evince the disposition to punish the wrong-doer corporeally, or by fine or disabilities. That he has already done, in his sovereign capacity, by the provisions of the three first sections. He now, by the right which belongs to him by the established rules of war, avails himself of the property of those who have assumed towards the nation the attitude of public enemies, to obtain means to help to support his own armies by depriving his enemies to that extent of means to support theirs.

That Congress possesses this right under the war-power, there is, I conclud', no doubt whatever. It is a right inherent in the nation from the order and fitness of things, and which I cannot clearly perceive how it can divest itself of. Unless there be something clearly and directly indicating that Congress has ignored this right, or ab-
171 solutely refused to exercise it, I must think the provisions of the fifth section show that it did exercise it. There is certainly no good reason why Congress should deprive itself of that important power, and more especially when the same power was resorted to by the formidable coalition then raised against the very life of the nation.

The resolution bearing the same date with the act, provides that no "punishment or proceedings under said act shall be so construed as to work a forfeiture of the real estate of the offender beyond his natural life." It is referred to as matter of history, that this resolution was passed in conformity with the views of Mr. Lincoln, to relieve his doubts of the constitutionality of the act. That being the avowed purpose for which the resolution was passed, the proviso it contains should bear only against that part of the act, if any, which is obnoxious to the objection raised by the President. A fair interpretation, then, of the resolution, it would seem, would restrict it to those sections which provide for the punishment of offenders. The fifth section of the act provides for the exercise of rights arising from the war-power, and are clearly free from constitutional objections.

If, then, under proceedings authorized by the sixth, seventh, and eighth sections of the act, property owned at the time of its passage by persons designated under the fifth section, has been sold, what is to prevent the purchaser from getting a fee-simple title? He acquires, as the law declares, a good and valid title, and this must mean a title in fee, unless the qualifying terms of the resolution limit it to a life-time
172 estate; and it clearly appears to me it does not in this case, as the property was not sold under fi. fa., to satisfy personal judgment against Benjamin, imposing a fine or forfeiture, but the proceeding was in rem, and assimilated in all respects to admiralty proceedings.

The case of Bigelow vs. Forrest, 9 Wallace, p. 339, seems at variance with the views here taken, which, however, I think, are sustained by subsequent decisions of the Supreme Court of the United States, and especially the cases of Miller's Ex. vs. The United States, and Tyler vs. Defrees, reported in 11 Wallace. If these cases conflict with the views expressed in Bigelow vs. Forrest, the authority of the latter case would seem to be overruled.

But the plaintiffs hold that whatever be the effect of the decree as to Benjamin, their rights are not impaired; that their mortgage follows the property; that it was not the purpose of the act of Congress of July, 1862, to involve the innocent with the guilty, and that no condemnation of the latter can affect the former.

This plea, I think, is entitled to but little consideration. The action was in rem, purely an admiralty proceeding in form. The usual monition was published. All persons were notified to come forward and make known their objections, if any existed, why the sale should not be made. This stood in the place of personal citation, and was equivalent to it. It was then incumbent upon the plaintiffs to have made objection or to have claimed priority in the distribution of the proceeds. The purchaser obtained the property free of all claims or liens whatever, and I think judgment should be given in his favor.

173 Foregoing opinions endorsed: No. 2301. Supreme court. T. Micon et al. v. J. P. and J. Benjamin and L. Madison Day. Mr. Justice Howell. Filed December 18, 1871. (Signed) M. P. Julien, d'p'y clerk.

Application for a rehearing filed December 26th, 1871.

174 *Extract from the minutes of the supreme court of Louisiana.*

MONDAY, *January* 29, 1872.

The court was opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and James G. Talafierro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

T. MICON ET AL.
vs.
J. P. AND J. BENJAMIN AND L. MADISON DAY. } No. 2301.

It is ordered that the rehearing applied for in this case be refused.

175 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions at New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State of Louisiana, in which a decision could be had in the suit between Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors and represented by their tutor, Augustin Micon, versus Judah Philip Benjamin, Joseph Benjamin, and

L. Madison Day, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under,
176 said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said L. Madison Day, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforsaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you
177 have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 4th day of December, in the year of our Lord one thousand eight hundred and seventy-one.

(Sig'd) F. A. WOOLFLEY,
[SEAL.] *Clerk of the United States Circuit Dist. of La.*

Allowed Jan'y 30th, 1872.
(Sig'd) JNO. T. LUDELING,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) Supreme court of Louisiana. No. 2301. L. Madison Day, plaintiff in error, vs. T. Micon et al., defendants in error.

178 Copy of a writ of error, lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 30th day of Jan'y, one thousand eight hundred and seventy-two.

L. MADISON DAY,
Attorney of Plaintiff in Error.

Filed Jan'y 30th, 1872.
(Sig'd) M. P. JULIAN,
De'ty Clerk Sup. Court, La.

179 Know all men by these presents, that we, L. Madison Day and J. Q. A. Fellows, both of the city of New Orleans and State of Louisiana, are held and firmly bound unto Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors and represented by their tutor, Augustin Micon, in the sum of thirty thousand dollars, to be paid to the said Thompson Micon, Susan

Virginia Micon, the widow of George P. Ring, Augustin , Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors and represented by their tutor, Augustin Micon, their executors, administrators, tutor, or legal representatives, to which payment, well and truly to be made, we bind ourselves and each of our heirs, executors, and firmly by these presents, sealed with our seals, and dated this 30th day of Jan'y, one thousand eight hundred and seventy-two.

Now the condition of the above obligation is such that, whereas,
180 at a term of the supreme court of the State of Louisiana, in a suit depending in said court between Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, William H. Micon, the last two being minors and represented by their tutor, Augustin Micon, plaintiffs, and Judah Philip Benjamin, Joseph Benjamin, and L. Madison Day, defendants, a final judgment was rendered in favor of plaintiffs, and against said defendants, Judah Philip Benjamin, Joseph Benjamin, and L. Madison Day, affirming the judgment rendered by the second judicial district court in and for the parish of Jefferson and State of Louisiana, in said case, and which said judgment, affirmed as aforesaid, is in the words and figures as follows: "It is ordered, adjudged, and decreed that the defendants, Judah Philip Benjamin and Joseph Benjamin, be condemned in solido, to pay plaintiffs the sum of ten thousand dollars, with interest thereon from Jan'y 1st, 1862, at the rate of eight per cent. per an-
181 num, with costs of this suit; and it is further ordered, adjudged, and decreed, that plaintiffs have a lien and privilege on the property described in the petition, in accordance with the said mortgage in said petition described, and that the defendant, L. Madison Day, surrender and abandon the said property within ten days from the signing hereof, unless he prefer to, and does, pay the amount of this judgment and costs. Judgment rendered March 6th, 1869, and signed April 1st, 1869;" and which aforesaid judgment of said supreme court of Louisiana, affirming the said judgment of the said district court, was rendered on the 18th day of December, A. D. 1871, and the said L. Madison Day applied for a rehearing, which was refused, and the said judgment of affirmance was made final on the 29th day of Jan'y, eighteen hundred and seventy-two; and the said L. Madison Day having obtained a writ of error to the Supreme Court of the United States, to operate as a supersedeas, and filed a copy thereof in the clerk's office of the said
182 supreme court of Louisiana, in the aforesaid suit, and a citation directed to the said Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors and represented by their tutor, Augustin Micon, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said L. Madison Day shall prosecute his said writ of error to effect, and shall answer and comply with and pay said judgment, with interest and all damages and costs if he shall fail to make his plea good, then this obligation to be void, else to remain in full force and virtue.

(Sig'd) L. MADISON DAY. [SEAL.]
J. Q. A. FELLOWS. [SEAL.]

Signed, sealed, and delivered in presence of—
(Sig'd) W'M WHITAKER.
(") ADAM PERKINS.

The above and foregoing bond has been examined and approved by me this 30th day of Jan'y, 1872.

(Signed) JNO. T. LUDELING,
Chief Justice Supreme Court of Louisiana.

183 (Endorsed.) Supreme court of Louisiana. Filed January 30th, 1872. (Sig'd) M. P. Julian, dep'y clerk.

184 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, and William H. Micon, the last two being minors, and represented by their tutor, Augustin Micon, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, and wherein L. Madison Day is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said L. Madison Day, as in the said of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John T. Ludeling chief justice of the
185 supreme court of the State of Louisiana, this 30th day of January, in the year of our Lord one thousand eight hundred and seventy-two.

(Sig'd) JOHN T. LUDELING,
Chief Justice Supreme Court of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Personally came and appeared before me, the undersigned, a justice of the peace in and for the parish of Orleans, and State of Louisiana, J. R. Beckwith, who being first duly sworn, deposeth and says that he served a true copy of the above and foregoing citation on John A. Campbell, the attorney of the above-name' Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon, Richard W. Micon, William H. Micon, the last two being minors and represented by their tutor, Augustin Micon, in the said parish, on the thirtieth day of January, A. D. 1872, and that he at the same time exhibited the above and original citation to the said John A. Campbell, attorney of said parties aforesaid.

186 [SEAL.] (Sig'd) J. R. BECKWITH.

Sworn to and subscribed before me this 30th day of January, A. D 1872.

(Sig'd) W. L. EVANS,
Second Justice Peace, Parish of Orleans.

Service of this citation acknowledged 3d January, 1872.

(Sig'd) J. A. CAMPBELL,
Plff's Att'y.

(Endorsed:) L. Madison Day, plaintiff in error, vs. T. Micon et al., defendants in error. Citation. Filed, Jan'y 30th, 1872. M. P. Julian, dep'y clerk, sup. court of La.

187 UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana, at New Orleans:

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, at New Orleans, do hereby certify that the foregoing one hundred and eighty-six (186) pages contain a full, true, and complete copy of the transcript of the proceedings had in the second judicial district court in and for the parish of Jefferson and State of Louisiana, in a certain suit wherein Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Willie Annie Micon Richard W. Micon, and William H. Micon, the last two being minors and therein represented by their tutor, Augustin Micon, were plaintiffs, and Judah Philip Benjamin, Joseph Benjamin, and L. Madison Day, were
188 defendants, and also a full, true, and complete transcript of the record, and of all the proceedings had and taken in this supreme court of the State of Louisiana, at New Orleans, on the appeal taken in said suit by said L. Madison Day, as the same now remain of record, and on file in my office, and which appeal is now on the file thereof under number 2301 of the docket thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said supreme court of the State of Louisiana, at the city of New Orleans, this fourth day of June, anno Domini 1872, and in the ninety-sixth year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

(Indorsement on cover:) No. 395. L. Madison Day, plaintiff in error, vs. Thompson Micon, Susan Virginia Micon, the widow of George P. Ring, Augustin Micon, Williannie Micon, and Richard W. and William H. Micon, minors, by their tutor, Augustin Micon. Louisiana sup. court. Filed 14th June, 1872.

180

Supreme Court of the United States.

L. MADISON DAY, Plaintiff in Error,

vs.

T. MICOU, ET AL., Defendants in Error.

L. MADISON DAY,
In Propria Persona.

[To be inserted in place of first sentence in brief.]

MAY IT PLEASE THE COURT: When the "Bonnie Blue Flag" went down before "The Star Spangled Banner," and that glorious emblem of "The Union, the Constitution, and the Enforcement of the Laws," again waived in triumph

"From Maine's dark pines and crags of snow
To where Magnolian breezes blow,"

it was fondly hoped that civil strife and contention were at an end, and that peace, quiet and repose had returned to bless the land.

But those were

"Hopes which but allured to fly;"

they were, indeed, but

"Joys that vanished whilst we sipp'd."

For scarcely had the roar of artillery ceased and the smoke of battle cleared off, and scarcely had the ink become dry on the parchments of Pardon, which fell from the Executive hand,

"Thick as autumnal leaves that strew the brooks
In Vallombrosa,"

before some

"Of the last few who, vainly brave,"

and who would theoretically, merely,

"Die for the cause they could not save,"

rushed into the courts, renewed the contest in another form, and we are here to-day on a writ of error to the Supreme Court of Louisiana to reverse a victory obtained in this *new mode* of hostility and attack upon the power and authority of the United States and the rights of one which are firmly based upon the same.

Supreme Court of the United States.

L. MADISON DAY, Plaintiff in Error

vs.

T. MICOU ET AL, Defendants in Error.

This was a writ of error to the Supreme Court of Louisiana. The suit was an *hypothecary* action (Rec. 1–2) to subject certain property to the payment of a mortgage granted by J. P. Benjamin and brother to plaintiffs' ancestor, prior to the seizure, condemnation and judicial sale of the same to plaintiff in error, under a decree of the United States District Court, at New Orleans, in the case of The United States vs. Two Squares of Ground, the property of J. P. Benjamin, under the provisions of the Confiscation act of July 17, 1862, and which decree of condemnation and sale was relied upon by plaintiff in error as a complete bar to the action. Rec. 5–12.

The Supreme Court of Louisiana affirmed the judgment of the lower court, subjecting the property to the payment of the mortgage, on the assumption that the property was confiscated for *crime*—was confiscated as the property of an *offender*, and that only a life estate was confiscable under the provisions of the joint resolution passed in connection with said act of Congress, and that the property therefore passed, *cum onere*, with the burden of the mortgage. Rec. 68–73.

The decision, therefore, of the highest court of the State being against the right and title of the defendant, specially set up and derived from an authority exercised under the United States, the case is properly in this court for revision under the twenty-fifth section of the Judiciary act of 1789, and amendatory act 1867

The errors assigned are as follows:

1. The *first* error assigned is that the Supreme Court of Louisiana *erred* in holding that only a life estate was confiscable under the Confiscation act of July 17, 1862, and the joint resolution passed in connection with the same.

2. The *second* error assigned is, that even if a life estate only were confiscable, it was nevertheless error to hold that plaintiffs were entitled to recover, as the property was actually condemned and sold in fee, and such condemnation was not void in any event, but at most only *voidable* on error.

3. The *third* error assigned is, that the court erred in holding that the property condemned and sold was subject to the mortgage in the hands of the purchaser at the judicial sale of the same.

1. The *first* error assigned is that the Supreme Court of Louisiana *erred* in holding that only a life estate was confiscable under the confiscation act of July 17, 1862, and the joint resolution passed in connection with the same. Rec. 68–73, 50.

This was a great mistake, and was evidently founded on a misapprehension as to the true nature and character of the act, as well as the scope, object and meaning of the resolution itself.

The joint resolution, according to its *express* words, only applies to punishments and proceedings against *offenders*, and does *not* extend to enemies and limit the confiscation of enemies' property to a mere life estate.

The confiscation act, as it is called, is an exercise of both sovereign authority and the belligerent right of confiscating enemy property on land during a state of war.

The first four sections of the statute relate to the punishment of treason and rebellion. This is an exercise of sovereign authority, and constitutes alone the criminal portion of the act. The other provisions of the act providing for the seizure and condemnation of the property seized, "as enemies' property" is but an exercise of the belligerent right of confiscating enemy property in time of war.

These different provisions of the act are, therefore, to be taken and regarded as separate and distinct from each other, as if they were embodied in two separate and distinct acts. The one relates to citizens and proceedings in time of peace. The other relates to enemies and proceedings in time of war. They are, therefore, different from each other in every essential particular. And they also differ from each other as to the mode of procedure and the rules of law which apply to and govern the same. A resolution or provision of law, therefore, which only embraces the one can not be said to extend to and include the other. And this being so, it follows, as a matter of course, that the joint resolution(12 U. S. Stat. 627) which says, "nor shall any punishment or proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life," only applies to punishments and proceedings against *offenders* under the criminal portion of the act, and does not extend to or limit the confiscation of property under the other provisions of the statute, as enemies' property, to a mere life estate.

And this is most manifest from the history of the resolution, as well as from the well known meaning of the terms used in the same.

The history and object of the resolution, in short, were as follows: The President (Mr. Lincoln) thought that Congress, according to his view of the Constitution, could only forfeit the real estate of a party for treason for and during the term of his life.

And he was further of opinion that if a fine was imposed, as part of the punishment for treason, as prescribed in the first section of the act, the real estate of the party might be seized and sold in fee to pay and satisfy the fine, and that that, therefore, would, in substance, be doing indirectly what could not be done directly.

In other words, he thought that as Congress could not, in his view, forfeit the real estate of a party in fee for treason, it could not reach the same result by means of a fine and a sale of the real estate in fee to pay and satisfy a fine imposed as a part of the punishment for treason.

And to obviate this objection of the President to the bill was the sole and only object of the amendment to the joint resolution, as its words clearly import and its history fully shows.

Upon the joint resolution explanatory of "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," (as it originally passed the House of Representatives, Cong. Globe, Part IV, 2d Sess. 37th Congress, pages 3373–4), being called up in the Senate, Mr. Clarke moved to amend the same by adding: "Nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life." Ib. 3374.

The object of this amendment will be best understood by giving the exact words of the mover, Mr. Clarke, on the floor of the Senate, and which are as follows: "I present the amendment to meet what I believe to be the objection of the President. That is it exactly." Ib. 3380.

To this Mr. Trumbull at once replied, "what he believes to be the wishes of the Executive; and he never would have thought of presenting the amendment for any other reasons. Then we are voting to meet the views of the Executive, and for no other reason whatever." Ib.

Here, then, we have the key to the motive of the amendment; and that, in the language of the mover, was "to meet what I believe to be the objection of the President." Now, what was "*the objection of the President,*" to the bill which it was proposed to meet by the passage of this amendment to the joint resolution?

The *sole* objection of the President to the bill as stated by Senators Harris, King, Trumbull and Howard *(and to whose statements no one dissented)* was, that Congress, according to his view, could not constitutionally forfeit real estate for treason, beyond the life of the traitor. Here, then, we have the constitutional provision about attainder of treason as the sole and only ground of objection to the bill.

Senator Harris, after stating that this question had been one of the subjects of discussion, and upon which there had been a difference of opinion, and that he had shown on a former occasion, at least to his own satisfaction, that the property of rebels might be confiscated in fee for *treason*, stated what he understood to be the President's opinion, as follows: "He is of opinion that the real estate of rebels can not, for treason, be confiscated beyond the term of their lives; and if the bill now before the President is allowed to stand as it is, it will be vetoed—we may as well understand it—and solely upon that ground. It is a bill that contains other and very valuable and important provisions." Ib. 3378.

And it was stated by Senator Trumbull (near the close of the debate on the resolution), and conceded by Senator Clarke, the author of the amendment, that the first section of the bill was the only one that had any reference to treason.

Mr. Trumbull, on that occasion, said: "This bill, however, as I understand it, does not provide for trying men for treason and forfeiting their property on their conviction for treason. There is no such principle in the bill. It does not change the punishment for treason, and it contains, if I recollect rightly, a provision in the first section authorizing the assessment of a fine. I believe that is retained."

Mr. Clarke.—That is retained.

Mr. Trumbull.—And that fine could be levied, I suppose, upon the real estate, and the real estate sold under that fine?

Mr. Clarke.—The bill so says.

Mr. Trumbull.—I would have preferred that that should have been out of the bill; but there is not in the whole bill, as I understand it—and I wish not to misunderstand it—any other clause, excepting that first section, forfeiting the real estate of a man who is tried for treason. Am I not right?

Mr. Clarke.—That is right.

Mr. Trumbull—Then why talk about this bill forfeiting the real estate beyond the life of the traitor? It is not in the bill, except it is in that first clause, that you shall get at the real estate by means of a fine. * * * As I understand it, there is not now in the bill any provision for forfeiting the property of a traitor beyond his life, or for any time, except as it will grow out of that first section. The other provisions of the bill for seizing property relates to property that is captured by the army where the person of its owner is not subjected to trial for treason or any other offenses Ib. 3380-1.

It is, therefore seen that the President's objections to the bill grew out of the constitutional provision in reference to attainder of treason. But it is also clear that the provisions of the first section of the act in reference to a fine which might be imposed on the *conviction* of a party for treason was the only part of the bill to which this provision of the Constitution could, by any possibility, have any application. For it was stated and conceded in debate in Congress (and the bill itself shows) that the real estate of one convicted of treason might be sold to pay and satisfy a fine imposed as a part of the punishment of treason.

It was this provision, and this provision, alone, in regard to the imposition of a fine by the court under the first section of the act, as a part of the punishment of treason, and a sale in fee of real estate to satisfy that fine, which gave rise to the doubt in the mind of the President as to the constitutionality of the bill.

And it is also clear that the only object of the amendment to the resolution was to obviate this sole constitutional objection of the President in reference to the operation and effect of a fine imposed under the first section of the act as a part of the punishment of treason.

And this being well understood and fully established, the object and extent of the amendment to the joint resolution is of easy solu-

tion (even if there were any doubt as to the meaning of the same from the words used), as the history of legislation, the cause or necessity of making the act, or foreign circumstances, may be looked into for the purpose of ascertaining the intention of the Legislature in making the act, and which, when ascertained, must be respected and obeyed. 1 Wheat. 115; 4 Gill. and J. 152, 153.

In Maynard vs. Johnson, 2 Nevada R. 25, it was held that in cases of doubtful construction, or where an act will admit of different constructions, the debates of a legislative body may be resorted to to determine the meaning of a law, where the language of the same is so ambiguous as not clearly to show the meaning intended to be conveyed.

At page 26 of the above case, Mr. Justice Bronson says: "In cases of doubt, and also where a statute will bear opposite meanings, either from inaptness of phraseology or an ungrammatical construction of its several clauses, it is very usual to resort to the discussions of the legislators on the disputed point, with a view to the ascertainment of their intention. This is authorized and legitimate, both in the interpretation of statutes and constitutions."

And in Canal Company vs. Railroad Company, 4 Gill. and John. R. 153, the court says: "In Preston vs. Browden, 1 Wheat. 115, the Supreme Court of the United States, in construing an act of Assembly of North Carolina, had recourse to the history and situation of the State, and treaties made by that State with the Indians, in order to ascertain the intention of the Legislature, and thereby to arrive at the meaning of the act, and decided that it did not embrace the land in question, though the words of it were sufficiently broad and extensive, on the ground that it did not appear to have been the intention of the Legislature."

From this consideration of the history of the resolution and the law applicable to the same, it is very evident that the joint resolution can not be held to embrace the confiscations specified in the statute, because such was not the intention of Congress in passing the resolution.

And not only is it clear from the history of the resolution that it was not intended to embrace and apply to confiscations "as enemies' property," but even the very words of the resolution itself show that it was only intended, and can only apply, to personal and

criminal proceedings under the first and second sections of the act. The words are: "Nor shall any punishment or proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life." It is therefore seen that the resolution, in express terms, refers *only to offenders* under the penal portions of the statute, the first and second sections being the only parts of the act under which it is possible for any one to be considered an offender, or under which any personal or criminal proceedings could be had.

The provisions of the fifth, sixth, seventh and eighth sections of the statute relate to persons as enemies, and not to offenders. The joint resolution is, therefore, not to be extended in its operation beyond offenders under the first and second sections of the act, so as to include those who are put by the other provisions of the statute on the footing of enemies. The word offender, *ex vi termini* means one who has violated some positive provision of law, and who is amenable to personal punishment, in some form or other, for his violation of the law. Enemies, as such, (and all the inhabitants of the seceded States, so far as belligerent rights were concerned, have been uniformly held by the Supreme Court of the United States as *enemies*, irrespective of their personal sentiments and dispositions), are not and can not be considered as offenders. Offenders are such under and by virtue of the municipal or statutory law of the land. Enemies, or those who are put upon the footing of enemies, so far as belligerent rights are concerned, are not amenable, as such, to the municipal law relating to offenders, but are alone liable to be dealt with according to the law of nations and the rights which war confers. A citizen may be regarded, so far as belligerent rights are concerned, as an enemy, and yet not be an offender. The Rapid, 8 Cranch, 155; Jecker vs. Montgomery, 18 How. 114.

In the first of these cases the property of a loyal citizen was condemned as forfeited to the Government, not because the owner was disloyal and an offender, so as to be amenable to personal punishment, but because his conduct in sending a vessel to the enemy's country to bring away his property was intercourse inconsistent with loyalty, and he was therefore, so far as his property was concerned, to be deemed and taken as an enemy. And so in the case referred to in 18 How. 114, property taken trading with the enemy

was held liable to be condemned as prize of war, because the owner *pro hac vice*, was to be considered and regarded as an enemy, though not an offender in the proper sense of that term.

And, on the other hand, a citizen may be, and often is, an offender without being an enemy.

When, therefore, we find the word *offender* used in a statute, as in the joint resolution, it is very clear that it does not include, and was not intended to embrace any one in his position or relation as an enemy. An offender in law occupies a very different and distinct position from that of an enemy. Offenders are amenable alone to, and are punishable by virtue of the municipal law. Enemies (or those the law deems such), on the other hand, can only be dealt with according to the law of nations and the rules which govern in civilized warfare.

It is said, however, in substance, that a citizen engaged in rebellion is not to be considered as an enemy—that he may be regarded as a traitor but not as an enemy. This is a great mistake. A citizen may at one and the same time be both an enemy and a traitor—an enemy to be dealt with as such whilst the war lasts, and a traitor, to be punished as such only when the rebellion is suppressed and the war at an end. In the language of the Supreme Court of the United States, in the Prize Cases, 2 Black, 674, "they are none the less enemies because they are traitors." But though they are both enemies and traitors, they are not to be dealt with in both capacities at one and the same time—enemies, whilst the war lasts, and traitors, to be punished as offenders when the rebellion is suppressed and the war at an end. Such being the law, it is but fair and reasonable to presume that Congress in passing the act of July 17, 1862, to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes, was well aware of the double position in which those in rebellion had placed themselves, and of its rights to deal with them in one or both of the positions and capacities in which they had placed themselves—that of enemies and traitors. And hence we find that Congress, in the act referred to, made provision as a means of suppressing insurrection for dealing with those in rebellion both as traitors and enemies. For it is for the political department of the government to fix or determine the status of parties. The provisions of

the act, therefore, relating to the different capacities and positions in which those in rebellion had placed themselves, and in which they were liable to be dealt with, are to be regarded and considered as separate and distinct from each other, as though they were embodied in separate and distinct acts. And this is evident from the fact that the criminal portion of the statute could only be enforced after the termination of the war, whilst that relating to the confiscation of enemies' property could only be enforced during the existence of the war. And this being well understood and established, it is very evident that when Congress passed the joint resolution relating alone to offenders, it did not intend that it should extend to or embrace enemies, and the proceedings against them as such, because an enemy can not be regarded in the eye of the law as an offender. Enemies can only be dealt with as such, and not as offenders. A statute, therefore, which refers to offenders only as the resolution does, can not be said to extend to and include enemies, or the rights of the Government against them as such, as provided and set forth in the confiscation portion of the act. And not only does the use of the word "offender" in the resolution show that it was only intended to embrace personal and criminal prosecutions under the first and second sections of the act, and the consequences which might attach and follow from the same, but the other words of the resolution clearly and unmistakably show that it was only intended by the resolution to tie up and make the act, as far as the punishment for treason and rebellion was concerned, square with the then President's views of confiscating only a life estate for treason. For it says: "Nor shall any punishment or proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

Now, does not this language show, beyond all doubt, that the resolution only refers, and was only intended to refer, to the punishment of treason and rebellion, and the proceedings incident to the same? Most clearly it does. The "punishment and proceedings" referred to can only relate to those personal punishments and proceedings under and by virtue of the provisions of the first and second sections of the statute, they being the only sections of the act under which any proceedings against the person of an offender could be had, or under which any one could be considered an of-

fender. If the resolution was intended to apply to all proceedings under the act, why was the word offender used in the same? The word offender was used to fix the limit of the operation of the resolution; it was to apply alone to those punishments and proceedings which were against offenders.

Besides, to work a forfeiture, according to all the authorities, is to bring about or produce anything as a resulting consequence from some prior act or thing.

The resolution, then, like the clause in the Constitution, only provides and guards against mere *resulting consequences*, or consequences which it was supposed would follow, as a matter of course, from punishments and proceedings against offenders under the criminal part of the act.

For Congress might well, in order to obviate the constitutional objection of the President as to the punishment of treason, limit the sale, by the resolution, of the real estate of the *offender*, to pay and satisfy a fine imposed as a part of the punishment of treason to a life estate, without at all modifying the other provisions of the act confiscating enemies' property absolutely. The motive or occasion for the modification in the one case would certainly be entirely wanting as to the other.

It would, therefore, seem to be almost a self-evident proposition that the joint resolution can only refer, and was only intended to refer, to punishments and proceedings against offenders, under the first and second sections of the statute, and does not embrace, and was not intended to embrace, confiscations of enemies' property under the other provisions of the act. And this would seem to derive great force and strength from the fact, as shown by the act itself, viz: that the object of seizing and condemning the property seized "as enemies' property," was to secure the speedy termination of the rebellion and the support of the army. These being the objects of the confiscation of the enemy's property, is it not evident that the mere confiscation of the life estate only of one liable to be killed in battle the next moment after the confiscation of his property, would be next to idle and useless? Who would purchase such a precarious interest during a state of war? And what revenue for the support of the army could have been expected from the sale of a mere life estate in the property seized and condemned as enemies'

property. None; actually none. Besides, if only a life estate was confiscable, to whom would the property go on the termination of the life estate during the war? Would it not descend to the heir of the enemy's ancestor and thus again become one of the sinews of war in the hands of the enemy? And would it not have to be condemned over and over again to make it available for the support of the army? A construction that would lead to such a result, and thereby defeat two of the main purposes of the act—the suppression of the rebellion and the support of the army—can not be a sound and correct interpretation of the resolution.

Seizure and condemnation of the property seized, "as enemies' property," were to, and could only, take place during the war. But the proceedings and punishment for treason could only take place and be inflicted after the suppression of the rebellion and the close of the war. For if, as is said in the books, the sovereign who was endeavoring to reduce his revolted subjects to obedience should hang for treason pending the contest, the insurgents would hang also, by way of retaliation, those of the established government who should fall into their hands, and thus the war would become one beyond the pale of civilized warfare.

Hence, civil wars, for the sake of humanity, are governed by the same rules which obtain in wars between independent nations, the parties on either side, *during the contest*, being regarded and dealt with as enemies and not as offenders. The policy, then, of forfeiting only the life estate in the property of traitors and offenders after the suppression of the rebellion and the close of the war can have no sort of application whatever to the confiscation of enemies' property during the existence of a state of war. The confiscation, then, of enemies' property is very different and distinct thing from that of punishing offenders. A law relating exclusively to the latter can can not then be said to extend to and embrace the former.

The right to confiscate enemies' property is a belligerent right, political in its nature, and entirely under the power and authority of Congress, and is wholly unfettered by the provisions of the Constitution relating to the punishment of treason and offenders. 30 Indiana R. 5.

Such being the law, it follows that that part of the act of July 17, 1862, relating to the confiscation of "enemies' property," must be

held to be separate and distinct from that portion of the act relating to offenders, and as the resolution, according to its express words, relates alone to the punishment and proceedings against *offenders*, it does not apply or extend to those parts of the statute providing for the seizure and confiscation of enemies' property. The provisions for the punishment and proceedings against *offenders* are to be found in the first four sections of the act, and are entirely separate and distinct from and have no sort of connection whatever with the subsequent sections of the statute specifying the persons whose property was to be liable to seizure, and providing for the seizure and condemnation of the property seized, not as the property of offenders, but as *enemies' property*. Punishments and proceedings against *offenders* under the statute, then, have no connection whatever with the confiscation proceedings provided for in the separate and subsequent sections of the act. The one is entirely separate and distinct from the other. And as the main purpose of the confiscation portion of the act was the speedy termination of the rebellion, as well as the support of the army, it seems to us that by no fair and reasonable mode of interpretation of the words used in the resolution, can it be held to extend to and limit the confiscation of enemies' property to a mere life estate. To do so would be to extend the resolution, as shown by its history, beyond the intention of Congress in passing the same. To do so would be to give an extent and meaning to the resolution far beyond its import, and which is not warranted by its words. And, finally, to do so would, if the war was still pending (and the act and the resolution should be construed together as though the war was still in existence), be to defeat two of the main purposes of the act, the suppression of the rebellion and the support of the army. A construction that would lead to such results, it seems to us, can not be regarded as a sound or proper construction of the statute and the resolution passed in connection with the same.

But what is more important and conclusive on this part of the case is the fact that this court, in the late cases of Miller vs. United States, 11 Wall. 268 ; and Tyler vs. Defrees, ib. 331, after elaborate reargument and after the most mature consideration, *held* that the first four sections of the act constituted *alone* the criminal part of the same, and was to be regarded as entirely separate and distinct from

the *confiscation* part of the act, which was but an exercise of the war powers of the government—the power of confiscation—and was *not* to be regarded as mere municipal regulations for the punishment of crime, and was therefore untrammeled and unfettered by the provisions of the Constitution relative to the punishment of crime—the punishment of offenders. The court also *expressly held* that the property was *not* confiscated for *crime*—was *not* confiscated as the property of *offenders*, but as *enemies'* property.

The language of the court, in Miller vs. the United States, 11 Wall. 304–313, is: "It remains to consider the objection urged on behalf of the plaintiff in error that the acts of Congress under which these proceedings to confiscate the stock have been taken are not warranted by the Constitution, and that they are in conflict with some of its provisions. The objection starts with the assumption that the purpose of the acts was to punish offenses against the sovereignty of the United States, and that they are merely statutes against crimes. If this were a correct assumption, if the act of 1861, and the fifth, sixth and seventh sections of the act of July 17, 1862, were municipal regulations only, there would be force in the objection that Congress has disregarded the restrictions of the fifth and sixth amendments of the Constitution. Those restrictions, so far as material to the argument, are, that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury; that no person shall be deprived of his property without due process of law, and that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed. But if the assumption of the plaintiff in error is not well made; if the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United States; if, on the contrary, they are an exercise of the war powers of the government, it is clear they are not affected by the restrictions imposed by the fifth and sixth amendments. This we understand to have been conceded in the argument. The question, therefore, is, whether the action of Congress was a legitimate exercise of the war power. The Constitution confers upon Congress expressly power to declare war, grant letters or marque and reprisal,

and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of any enemy, and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right. If there were any uncertainty respecting the existence of such a right it would be set at rest by the express grant of power to make rules respecting captures on land and water. * * * * *

"It is sufficient that the right to confiscate the property of all public enemies is a conceded right. Now, what is that right, and why is it allowed? It may be remarked that it has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him. The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent—a relation in which it has been brought in consequence of its ownership. * * * *

"It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property.* In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation.

"It is also to be observed that when the acts of 1861 and 1862 were passed, there was a state of war existing between the United States and the rebellious portions of the country. * * * War existing, the United States were invested with belligerent rights in addition

* Venus, 8 Cranch 253.

to the sovereign powers previously held. Congress had then full power to provide for the seizure and confiscation of any property which the enemy or adherents of the enemy could use for the purpose of maintaining the war against the government. It is true the war was not between two independent nations. But because a civil war, the government was not shorn of any of those rights that belong to belligerency. Mr. Wheaton, in his work on international law (see 296), asserts the doctrine to be that 'the general usage of nations regards such a war as entitling both the contending parties to all the rights of war as against each other, and even as it respects neutral nations.' It would be absurd to hold that, while in a foreign war enemies' property may be captured and confiscated as a means of bringing the struggle to a successful completion, in a civil war of equal dimensions, requiring quite as urgently the employment of all means to weaken the belligerent in arms against the government, the right to confiscate the property that may strengthen such belligerent does not exist. There is no such distinction to be made. Every reason for the allowance of a right to confiscate in case of foreign wars exists in full force when the war is domestic or civil. It is, however, unnecessary to pursue this branch of the subject further. In the Amy Warwick,* and in the Prize Cases,† it was decided that in the war of the rebellion the United States sustained the double character of a belligerent and a sovereign, and had the rights of both.‡

"We come, then, directly to the question whether the act of 1861, and the fifth, sixth, and seventh sections of the act of 1862 were an exercise of this war power, the power of confiscation, or whether they must be regarded as mere municipal regulations for the punishment of crime. * * * * * *

"It is the act of 1862, the constitutionality of which has been principally assailed. The act had several purposes, as indicated in its title. As described, it was 'An act to suppress insurrection, to punish treason and rebellion, *to seize and confiscate the property of rebels*, and for other purposes.' The first four sections provided for the punishment of treason, inciting or engaging in rebellion or insurrection, or giving aid and comfort thereto. They are aimed at

*2 Sprague 123. †2 Black 673. ‡Rose v. Himely, 4 Cranch 272; Cherriott v. Foussat, 3 Binney 252; Dobree v. Napier, 3 Scott 295; Santissima Trinidad, 7 Wheaton 306; United States v. Palmer, 3 Wheaton 635.

individual offenders, and they were undoubtedly an exercise of the sovereign, not the belligerent rights of the government. But when we come to the fifth and the following sections, we find another purpose avowed, not punishing treason and rebellion, as described in the title, but that other purpose, described in the title, as 'seizing and confiscating the property of rebels.' * * *

"It is impossible to read the entire act without observing a clear distinction between the first four sections, which look to the punishment of individual crime, and which were, therefore, enacted in virtue of the sovereign power, and the subsequent sections, which have in view a state of public war, and which direct the seizure of the property of those who were in fact enemies, for the support of the armies of the country. * * * * *

"It is ever a presumption that inhabitants of an enemy's territory are enemies, even though they are not participants in the war, though they are subjects of neutral States, or even subjects or citizens of the government prosecuting the war against the State within which they reside. * * * * * *

"We do not understand the acts, or either of them, to be applicable to any other than the property of enemies. All the classes of persons described in the fifth and sixth sections of the act of 1862 were enemies, within the laws and usages of war. * * *

"If it be true that all the persons described in the fifth, sixth and seventh sections were enemies, as we have endeavored to show they were, it can not matter by what name they were called, or how they were described. The express declaration of the seventh section was that their property should be condemned 'as enemies' property,' and become the property of the United States, to be disposed of as the court should decree, the proceeds being paid into the treasury for the purposes described, to wit—the support of the army. It was, therefore, as enemies' property, and not as that of offenders against municipal law, that the statute directed its confiscation."

From this able and well considered opinion (and which was reaffirmed in the subsequent case of Tyler vs. Defrees, 11 Wall. 331), it is seen that the law is definitely and finally settled that the Confiscation act of seventeenth July, 1862, was not an act solely for the punishment of treason and rebellion; that the first four sections of the act constituted alone the criminal portion of the same, and

was the only part of the act under which any one could be taken and considered as an offender; that the confiscation part of the act was separate and distinct from the criminal portion of the same; that the confiscation proceedings were not against the person of the owner, but solely *in rem* against the property which was confiscated under the act *not* as the property of an *offender*, but as *enemies' property*.

Now, these are important distinctions, and place confiscations on a very different ground and footing from what they occupied under the former decision in Bigelow vs. Forrest, 9 Wall. 339, in which it was held that only a life estate was confiscable under the act. This was holding, in effect, that the property was confiscated for crime—was confiscated as the property of an offender. But this was a case of first impression, and was, evidently, for want of argument, founded on a misapprehension as to the true nature and character of the act, as is fully shown and established by the subsequent cases of Miller vs. United States, 11 Wall. 268, and Tyler vs. Defrees, ib. 331, in which the point as to the nature and character of the act was for the *first* time raised and decided, and that, too, after the same had been *re-argued*.

In Bigelow vs. Forrest it was assumed, without argument, and without the attention of the court being directed to a consideration of the nature and character of the act, that the property which was in controversy in that case had been confiscated as the property of an *offender*, and was, therefore, within the Joint Resolution relating to offenders.

Of course, if the confiscation was for crime—if the property was condemned as the property of an offender, the duration of the estate to be taken would be determined by the terms of the resolution relating to punishments and proceedings against *offenders*.

But as we have shown above, and as the subsequent cases of Miller vs. United States and Tyler vs. Defrees have established the fact beyond any further controversy, that the property was not confiscated for crime—was *not* condemned as the property of an *offender* but as enemies' property, it follows as an inevitable conclusion that the Joint Resolution, which says "nor shall any punishments or proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life," *does not and*

can not by any possibility apply to the confiscation of *enemies'* property, which this court in the last two cases before it says is not confiscated as the property of offenders.

And as this court has distinguished and drawn a clear line of demarkation between proceedings against offenders and enemies under the act, it is impossible for offenders and enemies to be considered as one and the same. And if not one and the same, it is a self-evident proposition that the resolution, which, according to its very words, relates alone to punishments and proceedings against *offenders*, can not be extended to proceedings against enemies, or confiscations *jure belli.*

Indeed, it was expressly admitted by Judge Curtis, in his argument in the Garnet and McVeigh cases, 11 Wall, before this court (and which was in reality the only argument made against the constitutionality of the act), that the terms of the Joint Resolution had no sort of application whatever to confiscations *jure belli*, and he, therefore, based his whole argument against the constitutionality of the confiscation part of the act, on the ground that the whole act was to be taken and regarded as a criminal statute, and that the property was confiscated for crime—was confiscated as the property of offenders.

His words, after quoting the resolution, are: "A '*forfeiture*' of the estate of the '*offender.*' What have these terms to do with the appropriation of enemies' property under the laws of nations? They are strictly and exclusively applicable to punishment for crime. * * * * * * *

"Now, when your honors bear in mind that in legislating by virtue of the sovereign belligerent authority of the United States against the property of enemies, there is no restriction whatever as to the duration of the estate to be taken, and that when Congress is legislating concerning the punishment of crimes, there is a restriction," etc. Judge Curtis' brief, page 19.

And it was with this argument and these admissions of Judge Curtis before the court, and in answer to the same (all the confiscation cases having been argued together), that the decisions in Miller vs. the United States and Tyler vs. Defrees were made.

These latter cases, then, must be taken and regarded as conclusive that the property was *not* confiscated for crime—was not con-

fiscated as the property of offenders, but as *enemies' property*, and that the Joint Resolution, which relates alone to punishments and proceedings against offenders does not embrace proceedings for the confiscation of enemies' property, because proceedings for the confiscation of enemies' property are *not* (according to the decision in Miller vs. the United States) proceedings for the confiscation of the property of offenders. And according to the express words of the resolution it is *only* the property of the *offender* that was not to be forfeited by any punishment or proceedings under the act beyond the term of his natural life. It therefore does not embrace the confiscation of enemies' property, unless enemies and offenders are one and the same thing under the act; and if one and the same thing, then the inevitable conclusion would be that the confiscation part of the act would be unconstitutional, as the act of confiscation would be the confiscation of the property of an offender. It is therefore seen that the resolution can not be extended to the confiscation part of the act without overturning the principle of Miller vs. the United States and Tyler vs. Defrees.

Now, it is very true that Miller vs. the United States was a case of personality, and Tyler vs. Defrees, was a case where the original owner sued to recover the property, and the question therefore as to the meaning and extent of the Joint Resolution was not directly presented for determination. But the nature and character of the act were as directly presented and as much involved in each of those cases as it is in this, and the decision of the court in those cases as conclusively and finally determined the nature and charactor of the act as it is possible for it to be determined and settled in any case For in each of those cases the constitutionality of the act was for the *first* time directly raised and presented for determination, and the court, *ex necessitate rei*, was compelled to pass upon the nature and character of the act in order to determine the constitutionality of the same.

And as the court sustained the constitutionality of the act in each of said cases, on the express ground that the property was not confiscated for crime—was not confiscated as the property of an offender, but as enemies' property, it necessarily follows that in any and every case of confiscation the property must be regarded as having been confiscated as enemies' property and not as the property of an offender.

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And as this court has distinguished and drawn a clear line of demarkation between proceedings against offenders and enemies under the act, it is impossible for offenders and enemies to be considered as one and the same. And if not one and the same, it is a self-evident proposition that the resolution, which, according to its very words, relates alone to punishments and proceedings against *offenders*, can not be extended to proceedings against enemies, or confiscations *jure belli.*

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His words, after quoting the resolution, are: "A '*forfeiture*' of the estate of the '*offender.*' What have these terms to do with the appropriation of enemies' property under the laws of nations? They are strictly and exclusively applicable to punishment for crime. * * * * * * *

"Now, when your honors bear in mind that in legislating by virtue of the sovereign belligerent authority of the United States against the property of enemies, there is no restriction whatever as to the duration of the estate to be taken, and that when Congress is legislating concerning the punishment of crimes, there is a restriction," etc. Judge Curtis' brief, page 19.

And it was with this argument and these admissions of Judge Curtis before the court, and in answer to the same (all the confiscation cases having been argued together), that the decisions in Miller vs. the United States and Tyler vs. Defrees were made.

These latter cases, then, must be taken and regarded as conclusive that the property was *not* confiscated for crime—was not con-

fiscated as the property of offenders, but as *enemies' property*, and that the Joint Resolution, which relates alone to punishments and proceedings against offenders does not embrace proceedings for the confiscation of enemies' property, because proceedings for the confiscation of enemies' property are *not* (according to the decision in Miller vs. the United States) proceedings for the confiscation of the property of offenders. And according to the express words of the resolution it is *only* the property of the *offender* that was not to be forfeited by any punishment or proceedings under the act beyond the term of his natural life. It therefore does not embrace the confiscation of enemies' property, unless enemies and offenders are one and the same thing under the act; and if one and the same thing, then the inevitable conclusion would be that the confiscation part of the act would be unconstitutional, as the act of confiscation would be the confiscation of the property of an offender. It is therefore seen that the resolution can not be extended to the confiscation part of the act without overturning the principle of Miller vs. the United States and Tyler vs. Defrees.

Now, it is very true that Miller vs. the United States was a case of personality, and Tyler vs. Defrees, was a case where the original owner sued to recover the property, and the question therefore as to the meaning and extent of the Joint Resolution was not directly presented for determination. But the nature and character of the act were as directly presented and as much involved in each of those cases as it is in this, and the decision of the court in those cases as conclusively and finally determined the nature and character of the act as it is possible for it to be determined and settled in any case For in each of those cases the constitutionality of the act was for the *first* time directly raised and presented for determination, and the court, *ex necessitate rei*, was compelled to pass upon the nature and character of the act in order to determine the constitutionality of the same.

And as the court sustained the constitutionality of the act in each of said cases, on the express ground that the property was not confiscated for crime—was not confiscated as the property of an offender, but as enemies' property, it necessarily follows that in any and every case of confiscation the property must be regarded as having been confiscated as enemies' property and not as the property of an offender.

Bigelow vs. Forrest must then be considered as having been departed from. The ground of that decision is wholly inconsistent and irreconcilable with Miller vs. United States. The two can not stand together. The one rests on the supposition or basis that the property was confiscated as the property of an *offender*. The other stands out on the broad and comprehensive ground that the confiscation was not for crime, and that the property was not confiscated as the property of offenders, but as the property of enemies. Nor is this at all surprising. Bigelow vs. Forrest was a case of first impression, and was not as fully argued and as maturely considered as Miller vs. United States. And this may at once be perceived from what is said by the court in the still later case of Tyler vs. Defrees, as follows: "Five or six cases arising under this statute were argued before us at the last term, and, appreciating both the difficulty and the importance of some of the points raised in argument, they were all ordered to be argued again at this term, and have, under that order, been ably and fully re-argued."

It must therefore be taken as definitely and finally settled by this court that confiscations under the act of seventeenth of July, 1862, are not to be regarded as a confiscation of the property of offenders, but as the confiscation of the property of enemies. And being thus regarded and considered, it is perfectly manifest that the Joint Resolution, which relates *alone* to punishments and proceedings against *offenders*, can have no sort of application to the confiscation of enemies' property, and that a condemnation in fee was perfectly legal and proper.

The opinion of the majority of the Supreme Court of Louisiana is, therefore, manifestly erroneous, as it is directly in conflict with and contrary to the decisions of this court in Miller vs. United States, 11 Wall. 268, and Tyler vs. Defrees, ib. 331, and which are the last two cases on the subject of confiscation, and are, therefore, authoritative.

The great error in the opinion of the majority of the Louisiana court consists in holding (as was taken for granted and without argument on the point in Bigelow vs. Forrest) that the confiscation was for crime—that the property was condemned as the property of an offender.

Now, this is the very reverse of what was decided in Miller vs.

United States and Tyler vs. Defrees, after elaborate re-arguments and on mature consideration.

True, it is not said in these latter cases we overrule Bigelow vs. Forrest. But the court does say in Miller vs. United States, and re-affirmed in Tyler vs. Defrees, over and over again, that the confiscation was *not* for crime, and that the property was *not* condemned as the property of an offender but as "*enemies' property.*"

These latter cases, then, necessarily overrule the principle in Bigelow vs. Forrest.

The one case rests on the supposition that the confiscation was for crime, and that property was confiscated as the property of an offender, and therefore within the terms of the Joint Resolution relating to offenders. But the last two cases on the subject say that the confiscation was *not* for crime, and that the property was *not* condemned as the property of an offender, but as enemies' property. Do not these latter cases, then, necessarily overrule the former? Most clearly they do, as they establish a different principle from what was assumed in the other.

Surprise is expressed by the majority of the Louisiana court that if it was intended to assert a different principle and doctrine in Miller vs. United States and Tyler vs. Defrees from that of Bigelow vs. Forrest, that the court did not refer to the latter and expressly overrule the same.

But as the question of the constitutionality of the act was not raised in Bigelow vs. Forrest, of course nothing was decided in that case as to the nature and character of the act, and, as a matter of course, there was no occasion for the court to expressly overrule that case.

Now, it certainly is not sacramental that a court, in order to overrule a former decision, should say in express words we overrule it. For if the principle and doctrine of the first case be departed from in subsequent ones, the first case is as completely overruled as if the court had expressly so declared.

Miller vs. United States and Tyler vs. Defrees, then, having established a different principle and doctrine from that of Bigelow vs. Forrest, the latter must be considered as having been departed from by the subsequent cases, and the Joint Resolution, which relates *alone to offenders*, has no sort of application to the confiscation of enemies'

property; and in this view we are fully sustained and amply borne out by the able and well considered dissenting opinion of Mr. Justice Taliaferro, and which is unoubtedly a correct exposition of the law. For this court sustained the constitutionality of the act and the confiscations involved in the last two cases before it on the *express* ground that the confiscation was *not* for crime on the part of the owner, and that the property was *not* condemned as the property of an offender, but as "enemies' property."

And this conclusion was not only necessary, but absolutely indispensable in order to sustain the constitutionality of the confiscation part of the act. For the constitutionality of that part of the act was strenuously assailed, and the confiscations involved in those cases asserted to be invalid, on the ground that the whole act was but an exercise of soverign authority—that it was an act solely for the punishment of treason and rebellion, and that no confiscation of property could be had under the same until the party was regularly indicted, tried and convicted as an offender.

But no such question as these were presented or raised in Bigelow vs. Forrest; consequently nothing was *actually* decided in that case as to the nature and character of the act—nothing as to its constitutionality—nothing as to whether or not it was an act solely for the punishment of crime—nothing as to whether or not it was an act merely of sovereign authority—and nothing as to whether or not it was an act of both sovereign authority and the exercise of the belligerent right of confiscating enemies' property in time of war. From the whole report of the case it is evident that it was taken for granted *(and that, too, without any suggestion or argument on the point)* that it was an act solely for the punishment of treason and rebellion, and that the property was condemned as the property of an offender, and was therefore, within the terms of the Joint Resolution in relation to offenders.

But this court, when these points were for the first time raised and presented for decision in the subsequent cases, and after the same had been (as is said by the court, 11 Wall. 346) "ably and fully re-argued," declared that the act was an exercise of both sovereign authority and the belligerent right of confiscating enemies' property in time of war; that the first four sections of the act constituted *alone* the criminal part of the same, and the only part under

which any one could be taken and considered as an offender; that the confiscation portion of the act related to *actual enemies*, and provided for the confiscation of their property as such and *not* as the property of *offenders*.

The great error, therefore, of the Louisiana court consists in holding (and that, too, under an expressed acquiescence in the decision of this court affirming the constitutionality of the confiscation part of the act) that the cases of Miller vs. The United States and Tyler vs. Defrees decided nothing which was inconsistent with what was assumed in Bigelow vs. Forrest, viz: that the property was confiscated for crime—was confiscated as the property of an offender. It is true the court in Miller vs. United States and Tyler vs. Defrees was not called upon to decide *expressly* whether a fee or a life estate only was confiscable under the act. It is also true that Miller vs. the United States was a case of personality, and Tyler vs. Defrees was a case where the original owner sued to recover the property. But the court, as we have said above, was expressly called on in those cases to determine the nature and character of the different provisions of the act. And in upholding and maintaining the constitutionality of the confiscation portion of the statute, did declare and affirm the doctrine in the most explicit terms (so that he that runs might read) that the confiscation was not for crime, and that the property was not condemned as the property of an *offender*, but as *enemies' property*. The decision, then, of the majority of the Louisiana court holding that the confiscation was for crime, and that the property was condemned as the property of an offender is founded on a total misunderstanding and misapprehension as to what was involved and what was decided in Miller vs. United States and Tyler vs. Defrees.

How the Louisiana court failed to perceive and understand what was involved and what was actually and clearly decided in those cases, is really surprising.

But it is said, "Homer sometimes nodded," and it is, therefore, but charitable to suppose that when the majority of the Supreme Court of Louisiana so misunderstood the decisions of this court and so misconstrued the confiscation part of the act as to blend and confound the separate and distinct provisions of the act relating to offenders with those in reference to the confiscation of enemies'

property, they must have been under the influence of some strange hallucination.

For their opinion is nothing more nor less than the embodiment of the argument of the opponents of the constitutionality of the confiscation part of the act.

Indeed, the practical result of the opinion of the majority of that court is to render the confiscation part of the act wholly unconstitutional.

For if the property was confiscated for crime—was confiscated as the property of an offender—then it would follow, as a matter of course (as was ably contended by the opponents of the constitutionality of the act), that indictment by a grand jury and a regular trial and conviction of the party was *an indispensable prerequisite* to the confiscation of his property for crime, as every one is presumed innocent until the contrary is legally established.

It is therefore seen that the logical result of the opinion of the majority of the Supreme Court of Louisiana is to invalidate and render null and void every confiscation had under the act, as well as contravene and overturn the late decisions of this court, declaring that the confiscation was not for crime, and that the property was not condemned as the property of offenders, but as enemies' property.

And if not condemned as the property of an offender, but as enemies' property, it is a self-evident proposition that the Joint Resolution, which says, "Nor shall any punishments and proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life," does not apply to or embrace condemnations of property under the confiscation part of the act. For by the very terms of the resolution it is limited and restricted to punishments or proceedings against *offenders*.

It will not do, then, to say that the resolution applies to all proceedings under the act, as all proceedings under the act are not (as we have seen in the foregoing cases of Miller vs. United States and Tyler vs. Defrees) proceedings against offenders. The proceedings under the confiscation part of the act are proceedings solely against the property of enemies as contra-distinguished from offenders. There are no offenders under the confiscation part of the act. Its provisions relate alone to the confiscation of enemies' property.

It deals with the persons mentioned in the act with reference to the confiscation of their property as enemies, and not as offenders. All proceedings, therefore, under the act are not embraced in the resolution. The resolution does not so read. It is restricted in its operation by the word *offender*. The word offender is as much a part of the resolution as the word proceedings, and the latter term precedes and is tied up and restricted in its operation by the word offender. It can not, then, be omitted in construing and determining the extent and operation of the resolution. For, as is well said by the court in Early vs. Doe, 16 How, 610, 617, "every statute must be construed from the words in it, and that construction is to be preferred which gives to all of them an operative meaning."

And in the case of The Hibernia, Law Rep. 4 P. C. 511, 519, Sir Robert Phillimore in giving the judgment of the Privy Council in reference to the restrictive operation and effect of the little word "such," in an act of Parliament, said: "It is plain that the epithet 'such' here applied to pilot, refers to the particular qualified class out of which the Master is obliged to select one person, and their Lordships are of opinion that this restriction operates to destroy the relation of Master and servant which would arise in the case of a free choice made by the Master."

It is therefore plain that if the words "the offender" and "his natural life" are allowed to have their natural meaning and ordinary signification, they must have a restrictive operation and controlling influence in the construction of the resolution.

And as the whole resolution reads, "Nor shall any punishments or proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life," it evidently only applies and was only intended to apply to those punishments and proceedings which were against offenders under the first four sections, which is the only part of the act under which any one could be considered as an offender or any proceedings had against any one as an offender. There are no offenders under the confiscation part of the act. These provisions of the act relate alone to enemies.

The proceedings in confiscation were not required for the purpose of convicting any one as an offender. Indeed, it would have been impossible for any one to have been convicted as an offender in a proceeding *in rem* for the confiscation of property. 47 New Hamp.

374–5; 6 Am. Law Reg. (N. S.), 40. For as is well said, in Miller vs. United States, 11 Wall., 268, with reference to the right of confiscating the property of all public enemies and why it is allowed, "It may be remarked that it has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him."

And if the right to confiscate the property of all public enemies "has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him," how can it be said (as is done by the majority of the Supreme Court of Louisiana) that the property was confiscated for crime—was confiscated as the property of an offender? Proceedings in confiscation were not required, as we have said, for the purpose of convicting any one as an offender. Nor indeed was there any necessity for such proceedings in any court as a prerequisite to the right of confiscation. According to the well settled rule in relation to the rights which war confers, Congress might, had it seen fit, have confiscated all the property in the seceded States, without any reference whatever to the personal sentiments and disposition of the owners. For it has been repeatedly held by this court, as well as by all other enlightened courts which have passed upon the question, and is affirmed in the most explicit terms by every respectable author on International Law, that all the inhabitants of enemy's territory, so far as belligerent rights are concerned, are liable, without any reference to their personal sentiments and dispositions, to be taken and treated as enemies, and their property confiscated accordingly as such.

In the Gray Jacket, 5 Wall. 342, 369, 370, the court says: "The liability of the property is irrespective of the *status domicili*, guilt or innocence of the owner. If it come from enemy territory it bears the impress of enemies' property; if it belong to a loyal citizen of the country of the captors, it is nevertheless as much liable to condemnation as if owned by a citizen or subject of the hostile country or by the hostile government itself."

"The act was designed" (as is well said by the court in Tyler vs. Defrees, 11 Wall. 345) "to introduce the principle of confiscating enemy property seized on land, like that seized on water, applying the confiscation, however, to the property of a limited class of enemies, instead of all enemies."

It therefore follows that as confiscation *jure belli* has no reference to the personal sentiments and dispositions of the owner of confiscated property, but depends upon the *status* of the property (Miller vs. United States, 11 Wall. 268), and as the object of the confiscation part of the act (Tyler v. Defrees, 11 Wall. 331, 345) was to "introduce the principle of confiscating enemies' property seized on land, like that seized on water, applying the confiscation, however, to the property of a limited class of enemies, instead of all enemies," property confiscated under the act must be regarded and considered as having been confiscated *solely* as *enemies'* property, and not as the property of an offender. There are no offenders under the confiscation part of the act. Its provisions deal with property as that of enemies only, and does not touch the property of any one as an offender.

Had Congress seen fit to exercise the extreme right of confiscating all the property in the seceded States (that of the loyal as well as that of the disloyal), is it not apparet that the confiscation of the property of the loyal citizen, who was merely a constructive enemy, could not be regarded as having been confiscated for crime or as the property of an offender? Most assuredly it is. And if this be the rule in relation to the confiscation of the property of a loyal citizen, as a constructive enemy, must not the same rule apply to the confiscation of the property of all enemies, actual as well as constructive? The confiscation in either case would not be because of crime, but simply because the property was that of an enemy. Congress might, therefore, as we have said, have confiscated all the property of all the inhabitants of the seceded States as enemies' property.

But Congress was well aware (or at least believed) that there were many loyal citizens in the Confederacy, and therefore out of extreme regard for those who were actually loyal, though resident in the rebellous section, saw fit to waive the extreme rights of war so far as they were concerned, and limited the right of confiscation to the property of *actual enemies.*

Hence judicial proceedings *in rem* were required by the confiscation part of the act, not for the purpose of convicting any one of crime, but for the purpose of ascertaining the fact judicially that the property proceeded against was the property of one of the class of persons named in the act, and which, on the ascertainment of that

fact was to be condemned not as the property of an offender, but as enemies' property. It is, therefore, seen that the confiscation proceedings were not required for the purpose of convicting any one of crime—were not required for the purpose of confiscating the property of any one as an offender, but solely for the purpose of ascertaining who were *actual* enemies, and providing for the condemnation of their property as such and not as the property of offenders.

The proceedings in confiscation were necessary and required solely for the purpose of the exercise of the limited right of confiscation as provided in the act. They were not designed or intended as proceedings against offenders as such, but solely against the property of actual enemies. And being so regarded, it is perfectly evident that they are not embraced in the terms of the Joint Resolution providing, "Nor shall any punishments or proceedings under the act be so construed as to work a forfeiture of the estate of the offender beyond his natural life." For the resolution refers to and embraces those only who were *offenders* under and by virtue of the provisions of the first and second sections of the act. There is no other provision of the act under which any proceedings can be had or taken against any one as an offender. The resolution, therefore, refers only to punishments and proceedings against offenders under and by virtue of the first and second sections of the act, and does not include or embrace proceedings in confiscation, because the property was not confiscated for crime—was not confiscated as the property of an offender, but as enemies' property. The condemnation in fee was therefore right and proper, and the purchaser took an absolute estate in the property.

But in the case of the Heirs of John Slidell vs. The United States, in the Circuit Court thereof, at New Orleans, Mr. Justice Bradley has said: "The Joint Resolution approved at the same time with the Confiscation act, provides that no punishment or proceedings under the act shall be so constued as to work a forfeiture of the real estate of the offender beyond his natural life.

"It seems to me that this provision extends to the whole act, and to 'the proceedings' for confiscation as well as to the prosecution for the crimes of treason and rebellion. It may be very true, and I am inclined to think it is true, that the constitutional provision

which declares that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted, does not apply to the confiscation of enemies' property, even though those enemies be rebels against the government, and, therefore, guilty of treason."

From this extract from the opinion of Judge Bradley it is seen that he admits that the constitutional provision that "no attainder of treason shall work corruption of blood or forfeiture of estate, except during the lifetime of the party attainted," does not apply to the confiscation of enemies' property, even though they be rebels and guilty of treason.

Now, why is it that this constitutional provision does not apply to the confiscation of enemies' property, even though they be rebels and guilty of treason, and limit the confiscation to a mere life estate? Simply because it is confiscated as enemies' property and not as the property of rebels and traitors. Confiscating the property of enemies is one thing, the punishment of rebels and traitors another, and a very different thing. The right to confiscate the property of an enemy is derived from a state of war, and upon the exercise of the war powers of the government "no restrictions are imposed." Miller vs. The United States, 11 Wall. 305. But the right to punish treason and rebellion is an incident of sovereignty, and is expressly provided for by the Constitution and is subject to its provisions, limitations and restrictions.

The government, then, in providing for confiscating the property of those who were engaged in insurrection and rebellion as enemies' property, was not acting in its sovereign capacity and providing punishment for crime, but was merely exercising the belligerent right of confiscating enemy property in time of war. The confiscation was but the exercise of the war right of confiscating enemies' property, and not the punishment of traitors and rebels. The provision of the confiscation part of the act, therefore, relates alone to enemies, and does not apply to any one as an offender. It does not deal with the property of any one as an offender. For if it did, it would not be the exercise of the war right of confiscating enemies' property in time of war, but an act of sovereign authority punishing crime, and therefore subject to all the constitutional provisions in relation to the punishing of treason. But the court, in Miller vs.

The United States, has held and held correctly, that the confiscation is not for crime—that the property is not confiscated for treason or as the property of an offender, but as enemies' property. Hence, as Mr. Justice Bradley admits, the constitutional provision in relation to attainder of treason does not apply to the confiscation of enemies' property *(even though they be rebels and traitors)*, and limit the confiscation to a mere life estate, how is it possible to say that the Joint Resolution, which merely says, "nor shall any punishment or proceedings under the act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life," applies to the confiscation of enemies' property and limits the confiscation to a mere life estate? Are not the two provisions in substance the same? The very wording and phraseology of the resolution, it seems to us, preclude and render it impossible that it should apply to or include the confiscation of enemies' property.

With the word offender in the resolution, it is absolutely impossible to say that it applies to the confiscation of enemies' property, unless we admit that the confiscation was for crime—was a confiscation for being engaged in treason and rebellion, and a confiscation merely for crime.

It was only the property of "the offender" that was not to be forfeited by any punishment or proceedings under the act beyond "his natural life." The resolution says nothing whatever about any proceedings against the property of enemies. It does not limit the confiscation of enemies' property to a mere life estate. It provides alone against the forfeiture of the real estate of the offender beyond the term of his natural life.

It is therefore seen that it was the real estate of "the offender" simply that was not to be forfeited "beyond his natural life." And the words "his natural life," evidently refer and can only refer to "the offender" whose property could only be forfeited under the municipal law (the criminal part of the act), and does not and can not embrace the confiscation of enemies' property, *jure belli*, as provided by the statute, because "enemies' property" is *not* confiscated as "the real estate of the offender." To so hold would be to abolish all distinction between the forfeiture of the real estate of the offender under the municipal law and the confiscation of enemies' property as such *jure belli*.

For if it can be said that the confiscation of enemies' property as provided in the act is the "forfeiture of the real estate of the offender" so as to bring it within the terms of the resolution, then the words enemies and offenders are one and the same, and the whole act would be but an act of municipal legislation relating to offenders. Can, or will this court assume such a position? We think not.

Judge Bradley, however, further said in the above case, in reference to the constitutional provision in relation to attainder of treason:

"But whether it applies or not, Congress, from respect to the scruples of the President, or for other reasons which seemed to it sufficient, did enact, as it had a right to do, that no proceedings under the Confiscation act should be so construed as to work a forfeiture of real estate beyond the natural life of the offender."

Now, it is very true that the resolution was passed by Congress from respect and regard to the Constitutional scruples of the President. But what were those scruples? Simply that Congress, as a penalty for treason, could only forfeit the real estate of the traitor for and during the term of his natural life.

But there could be no constitutional scruples in regard to the confiscation of enemies' property, as there are (as determined and settled by this court in Miller vs. The United States, 11 Wall. 305), no limitations and restrictions upon the war powers of the Government—the power of confiscation.

The President's scruples, therefore, related alone to the punishment of treason, and this is to be found only in the first four sections of the act.

In the first section of the act death is the penalty provided for treason, or the party may be fined and imprisoned, and all his property (except slaves, who were to be declared and made free) might be sold to pay and satisfy the fine. But, said the President, according to my view of the Constitution, you can only forfeit a traitor's property for treason for and during the term of his natural life. If, however, as provided in the first section of the act, he is fined and imprisoned, his property may be sold, and sold in fee, to pay and satisfy the fine. Now, said he, that would be doing indirectly what I think you can not do directly. Such were the scruples of the President, as fully appears from the debates in Congress on the subject, as well as the

draft of a message returned with his approval of the bill and resolution. Hence it is seen what were the scruples and objections of the President, which the resolution was intended to meet and obviate.

But it may be said that the President considered the whole act as an act solely for the punishment of treason and rebellion, and that therefore the resolution applies to the whole act.

The successful answer to this is, that this court, in Miller vs. United States, 11 Wall. 268, and affirmed in Tyler vs. Defrees, ib. 331, has settled the question beyond further controversy, that the whole act is not an act for the punishment of treason and rebellion—that the first four sections of the act constitute alone the criminal part of the same; that the other provisions of the act are but an exercise of the war powers of the government, and that the same are untrammeled and unfettered by the constitutional provisions in relation to the punishment of treason and crime.

Whatever, then may have been the President's views as to the nature and character of the whole act, certain it is, that it can no longer be regarded by any one as an act solely for the punishment of treason, since it has been otherwise authoritatively determined by that department of the government intrusted by the Constitution and laws with the ultimate and final determination of such matters. Besides, it is historical that even the President himself at an early period of the rebellion was compelled, from the necessity of the case as well as by the rules which govern in civilized warfare, to treat and deal with those engaged in insurrection and rebellion as belligerents and enemies, and not as criminals and offenders. For as soon as it became known in the Confederacy that certain Confederate seamen had been captured by the United States forces, and had been taken into Philadelphia and indicted, tried and convicted as pirates and sentenced to be hung, the Confederate authorities at once selected a corresponding number from among the United States prisoners in their hands as hostages, and notified Mr. Lincoln that if he executed the Confederates they would retaliate by the execution of the hostages they had selected. And upon the receipt of this information, Mr. Lincoln, seeing that he could not deal with those engaged in rebllion as criminals and offenders, at once ordered the release of the pirates, sent them through the Union lines into the

Confederacy, and from that time to the close of the war treated and recognized the Confederates solely as belligerents and enemies, and not as offenders.

It is, therefore, seen that the action of the President and that of the government in the conduct of the war corresponds with the decisions of this court as to the nature and character of the act.

Whatever, then, may have been Mr. Lincoln's views in the beginning of the rebellion, certain it is that at a very early period of the war he was at least, from the necessity of the case, forced to treat and deal with those in insurrection and rebellion as belligerents and enemies, and not as traitors and rebels, and this is in exact accordance with the principles of the Confiscation act, as determined and settled conclusively, as we have said, by this court.

As the confiscation part of the act, therefore, is not an act for the punishment of treason and rebellion, but an exercise merely of the belligerent rights of the government, it is not embraced within the scruples of the President in relation to the punishment of treason, and hence does not come within the terms or reason of the Joint Resolution which was intended solely to obviate and remove his constitutional objections to the act, to wit: the extent of the punishment for treason.

And there is no principle or rule of law better settled and determined than that a thing which is not within the reason and intention of the law-maker at the time of the making of the act, is not within the statute, even were the terms of the act broad enough to include the same, because such was not the intention of the Legislature or law-maker in passing the statute. Preston vs. Browden, 1 Wheat. 115; Canal Company vs. Railroad Company, 4 Gill & J. 1; In the Matter of the Everglades, 47 N. Y. 218, 220.

"If it be true" (says Mr. Justice Davis, in Reiche vs. Smythe 13 Wall. 164) "that it is the duty of the court to ascertain the meaning of the legislature, from the words used in the statute and the subject matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so in order to carry out the legislative intent." S. P. Brown vs. McLachlin, Law Rep. 6 H. L. 543, 552.

The Joint Resolution, therefore, can not be extended to the confiscation part of the act, even if the words of the resolution were

broad enough to include the same, because such was not the intention of Congress, as we have seen, in passing the Resolution.

"But," says Mr. Justice Bradley, "I can see no way in which this limitation can be confined to criminal proceedings under the act. It seems to me that by a fair interpretation it extends to all proceedings by which a forfeiture is effected or adjudged."

But how can the resolution apply or be applied to the whole act and to all proceedings under the act, unless the whole act and all proceedings under the same are provisions and proceedings for punishing treason and rebellion—provisions and proceedings for confiscating the property of "the offender."

For, according to the express words of the resolution, it was "the real estate of the offender" *alone* that was not to be forfeited by any punishment or proceedings under the act beyond the term of his life.

How, then, can it be fairly said to extend to and include the confiscation of enemies' property, as such property is *not*, as determined in Miller vs. the United States, 11 Wall. 268, confiscated as the property of an offender? And as it is not confiscated as the property of an offender is it not a self-evident proposition that it is not within either the words or meaning of the Resolution? It seems to us that it is.

Provisions and proceedings for punishing treason and rebellion—for punishing offenders, are very different both in nature and character, and governed by entirely different rules from those relating to the confiscation of enemies' property. To punish treason and rebellion, the party must be indicted by a grand jury—must be present in the district where the offense was committed to be tried and can only be convicted upon the testimony of two witnesses to the same overt act, or upon his own voluntary confession in open court.

But the right and the proceedings to confiscate enemy property are untrammeled and unfettered by any such provisions and restrictions, and in most instances the condemnation and confiscation of enemy property takes place during the absence of the owner, and when by reason of his absence it would be wholly impracticable for any personal proceeding to be had and taken against the owner. The presence of the property alone, however, gives jurisdiction *in*

rem, and if no one appears to claim the same, it is condemned as a matter of course.

If, however, a claimant appears, the sole question is, whether or not it is enemies' property or of that class of enemies, *actual* as contradistinguished from constructive enemies, and if found to be such, it is according to the express requirements of the seventh section of the act, to be condemned as "enemies' property."

Such, then, being the nature and character of the different parts of the act, and such the difference between the nature and character of, as well as the difference in, the modes of proceeding and the rules of evidence applicable in criminal proceedings from those in confiscation proceedings, it seems to us that there is no difficulty whatever in restricting the resolution in its operation to the criminal part of the act.

In the first place it seems to us that the language of the resolution is aptly chosen so as to be applicable *only* to those punishments and proceedings which were against *offenders*, and which could only be had under the criminal part of the act.

The mover of the resolution, Mr. Clarke, says, the resolution was presented *solely* to meet the views of the President.

It was, therefore, framed for a particular purpose. And that purpose was to satisfy the President, so as to secure the passage of the act, and leave the question as to whether or not it was an act solely for the punishment of treason and rebellion, or an act with two separate and distinct purposes—one the punishment of treason and rebellion, the punishment of offenders, and the other purpose that of confiscating enemies' property—to be settled and determined by the courts.

And if it was determined that the act was an act solely for the punishment of treason and rebellion, as a matter of course the resolution would apply to all proceedings, as all proceedings under the same would be proceedings against offenders. If, however, on the other hand, it should be determined by the courts that the whole act was not an act for the punishment of treason and rebellion, but contained a separate and distinct provision for the confiscation of enemies' property *jure belli*, then the resolution would not apply to that part of the act, as proceedings for confiscating enemies' property would not be proceedings for the confiscation of the property of *offenders*.

The two great objects and purposes of the confiscation part of the act were the suppression of the rebellion and the support of the army. And in the seventh section of the act it is expressly declared that the courts might establish such form of decree and direct such mode of conveyance as should carry out the purpose of the act, and at the same time vest in the purchaser of the property condemned and sold a good and valid title.

Such being the great object and purpose of the confiscation part of the act, and such the directions of the seventh section thereof, it is very evident that the Joint Resolution can not be held to extend to the confiscation part of the act and limit the confiscation of realty to a mere life estate without defeating and nullifying to a great extent those great purposes and objects as declared in the act.

The object of confiscation, and the reason why it is allowed, is that it is an instrument of coercion, and a means of support to the party or power exercising the same.

When, therefore, the government provided for confiscating the property of a certain class of enemies, as specified in the act of 17th July, 1862, it is evident that it was designed to be effectual for the purposes for which it was employed.

And those great purposes were the suppression of the rebellion and the support of the army. These were the great and cardinal objects of confiscation, as are fully and clearly declared in the act.

Such, then, being the object and purpose, and such the directions of the confiscation part of the act, it is very evident that Congress did not intend that these great objects and purposes of confiscation should be superseded or modified by the Joint Resolution, unless the act of confiscation was a confiscation for crime—was a confiscation of the property of offenders.

It is not, therefore, to be supposed that Congress intended that the great objects and purposes of confiscation, the suppression of the rebellion and the support of the army, should be so superseded and modified by the Joint Resolution relating to punishments and proceedings against offenders, as to nullify and make the act of confiscation of but little if any practical importance as an instrument of coercion, and as a means of support to the army.

What sort of an instrument of coercion, what sort of a means of support to the army would the confiscation of a mere life estate be?

Practically it would amount to nothing. The great motive, the stimulating incentive to the acquisition and retention of property is the joyous anticipation and the ineffable satisfaction of being able to leave it to those who are the chief objects of affection and regard.

Destroy these hopes, take away these glorious incentives to the acquisition of property, and life would soon lose the greater part of its solace and its charm.

When Congress, therefore, was forced by the magnitude of the rebellion to resort to the belligerent right of confiscating enemy property as an instrument of coercion and as a means of support to the army, it wielded a power of the greatest magnitude. It was a power greater than an army in the field.

For men for glory and renown may be willing to risk their lives amid the storm of battle, but when they behold even in the anticipation of disaster and defeat, the poverty and want of themselves as well as the misery and wretchedness of those who are their chief objects of affection and regard, they are more likely to pause, to reflect, and finally to desist from war, unless they have gone beyond the point of safety and return to the paths of peace.

Confiscation is, therefore, of the greatest power and efficacy in war. It struck the shackles of slavery from four millions of human beings, and gave their support to the cause of the Union, the Constitution and the enforcement of the laws. It appeals to all those noble impulses of our nature in tones louder than that of the seven thunders spoken of in the Apocalyptic vision, to pause, to desist from a war which may bring not only ruin and want upon those engaged in the same, but may entail misfortune and wretchedness upon those whom they esteem "more dear than all the world beside."

When Congress, then, resolved upon and provided for the confiscation of the property of a limited class of enemies as specified in the act, it is not to be supposed that they did not intend to make it effectual for the purposes for which it was resorted to.

Nothing short of a positive declaration to that effect, it seems to us, will justify any court in coming to such a conclusion. Certainly such would be the ruling of any and every court if the contest was still pending and undetermined. No court, it seems to us, if the war was still in progress, could be found that would for a moment

countenance the idea, much less hold that the Joint Resolution limited the confiscation of enemy property to a mere life estate.

And if it could not be so construed in time of war, how can it be so interpreted after peace has once more returned to bless the land?

It seems to us to be utterly impossible that the resolution can, according to any known rule of construction or interpretation, be so construed as to extend to and operate a repeal or modification of the confiscation part of the act.

And this is most manifest from the fact that the resolution contains no express words of repeal or modification whatever of any provision of the statute. It can, therefore, only operate as a repeal or modification of the act by implication, to the extent, *and to the extent only*, to which they are repugnant and *wholly irreconcilable* by any fair and reasonable mode of interpretation.

But before one act of Congress will operate a repeal or modification of another, passed even at a *different* session of Congress, by implication it must appear that there is a positive and irreconcilable repugnancy between the two.

"That statutes may be repealed by implication and without any express words" (there can be no doubt), "still the leaning of the courts is against the doctrine, if it be possible to reconcile the two acts of legislation together." Sedg. Stat. and Const. L., 127.

And the reason is, "laws are presumed to be passed with deliberation, and with a full knowledge of all existing ones on the same subject; and it is, therefore, but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any prior law relating to the same matter, unless the repugnancy between the two is irreconcilable; and hence a repeal by implication is not favored; on the contrary, courts are bound to uphold the prior law if the two acts may well subsit together." Ib.

A repeal by implication is not favored in any case by the courts. The two acts must be reconciled if possible. McCool vs. Smith, 1 Black, 459; Naylor vs. Field, 5 Dutcher's (N. J.) R., 287; State vs. Berry, 12 Iowa (4 Whith.) R, 58; 10 Ohio (N. S.) R., 25; 1 Head's (Tenn.) R., 113; 3 Wallace, 633; 22 How., 311; 25 Ind., 166.

In Ind. School Dist. vs. Whitehead, 2 Beasley's (N. J.) Ch. R. 291 Chancellor Green well says: "But the repeal of a statute by implication is not favored. Unless the latter statute is manifestly

inconsistent with and repugnant to the former, both remain in force Courts are bound to uphold the prior law if the two may subsist together. The matter must be so clearly repugnant that it necessarily implies a negative. Dwarris on Stat., 674; 1 Bl. Com., 89, and cases cited, note 34, Sharswood's ed.; Beales vs. Hall, 4 How, U. S., 37; Bowen vs. Lease, 5 Hill, 221, and cases cited, note a, 225."

In Ludlow's Heirs vs. Johnson, 3 Ohio, 553, it is said: "When the provisions of two statutes are so far inconsistent with each other that both can not be enforced, the latter must prevail. *But if by any fair course of reasoning the two can be reconciled, both shall stand.* * * * *No court will, if it can consistently be avoided, determine that a statute is repealed by implication.*"

In Cass vs. Dillon, 2 Ohio State, (Warden) 610, the court thus states the law. "As repeals by implication are not favored, the repugnancy between the provisions of two statutes must be clear, and so contrary to each other that they can not be reconciled, in order to make the latter operate a repeal of the former. This rule is the result of a long course of decisions."

"Statutes should be construed with a view to the original intent and meaning of the makers, and such construction should be put upon them as best to answer that intention which may be collected from the cause or necessity of making the act, or from foreign circumstances; and when discovered ought to be followed, although such construction may seem to be contrary to the letter of the statute. Plow., 205, 232; 11th Coke Rep., 73; 19th Vin., Abr., 519; 6th Bac. Abr. 384. That therefore, which is within the letter of a statute is sometimes not within the statute, not being within the intention of the makers. 'If laws and statutes seem contrary to one another, yet if by interpretation they may stand together, they shall stand;' and where two laws only so far disagree or differ as that by any other construction they may both stand together, the rule that *leges posteriores, priores contrarias abrogant*, does not apply, and the latter is no repeal of the former. Roll. Rep. 90, 91; 2d Co. Rep., 5, 6; 11 Coke Rep., 63, 64; 19 Vin. Abr., 519, 525. It is laid down as an established rule, in 19 Vin. Abr., 525, Pl. 132, that 'repeals by implication are things disfavored by law, and never allowed of but when the inconsistency and repugnancy are plain and una-

voidable; for these repeals carry along with them a tacit reflection upon the legislators that they should ignorantly, and without knowing it, make one act repugnant to and inconsistent with another; and such repeals have ever been interpreted so as to repeal as little of the preceding law as possible; and in 6 Bac. Abr., 385, that 'where it is manifestly the intention of the Legislature that a subsequent act of Parliament shall not control the provisions of a former act, the subsequent act shall not have such operation, even though the words of it, taken strictly and grammatically, would repeal the former act.' These principles have been recognized and adopted by courts from the time of Roll, Plowden, and Coke to the present day." Canal Co. vs. Railroad Co., 4 G. & J., 1.

Nor is this rule to be departed from on any pretense or suggestion that the spirit of the resolution is more comprehensive than its words import. For, as is well said by Mr. Justice Thurman, in Cass vs. Dillon, 2 Ohio State (Warden) 612, "when was an enlarged meaning given to a statute beyond the import of its words, in order to repeal another statute by implication? We have met with no such case, and none has been pointed out to us."

In the State vs. Snyder, 50 N. Hamp. 158, the court refers to the case of the State vs. Wilson, 43 N. Hamp. 415, as laying down the correct rule, and says it was there held that the law does not favor repeal by implication either of former statutes or of the common law, and that, although two acts are seemingly repugnant, yet they should if possible have such construction that the latter may not be a repeal of the former by simplication" and then proceeds to state that a subsequent statute will repeal a former one "only when and so far as directly and irreconcilably opposed in terms."

In the case of the United States vs Sixty-seven Packages of Dry-goods 17 How. 85, 93, this court said in reference to statutes passed at different sessions of Congress for the prevention of frauds upon the revenue, and providing for the collection of the same, and which were seemingly repugnant and in conflict, that the rule was that a subsequent statute would not operate a repeal of a prior act by implication, "unless the repugnancy is clear and positive so as to leave no doubt as to the intention of Congress.

"This is the doctrine to be found in the case of Wood vs. The United States, already referred to, and in the several subsequent cases. 3 How. 197; 16 N. 150."

And In the Matter of the Everglades, 47 N. Y. 218, 220, it is said the settled rule is that "A statute will not be repealed by implication if a reasonable construction will enable it to stand consistently with the alleged repealing statute."

In the State vs. Draper, 47 Mo. 29–33, the court says: "But, while repugnant statutes necessarily supplant previous ones, they must be clearly repugnant; for, unless the legislative intent is expressed in terms, it will not be assumed, if any other construction can be given to the subsequent act."

And Blain vs. Bailey, 25 Ind., 165–168, shows the rule to be that a subsequent general statute, without negative words, does *not* repeal a prior particular act "by implication, unless it is absolutely necessary, in order that the latter act shall have any meaning at all. Dwarris, 674; Sedgwick on Stat., 123; Williams vs. Pritchard, 4 T. R. 2."

And this is more especially the case where the two acts (as in this case) were passed not only at the same session of Congress, but actually approved by the President on the same day. For in the case of acts passed at the *same* session of the Legislature, it is well settled that the ordinary rules of construction employed to determine whether former laws have been repealed by the enactments of a subsequent Legislature, *are inapplicable, and the rule is that the whole must be taken as one act, and that nothing short of a direct, express, repeal in terms, or such irreconcilable repugnancy as that both can not stand together*, and one consequently must give place to the other, and operate its repeal by implication, has, it is believed, ever been held sufficient to justify a court in holding one act repealed by another passed at the *same session*. Cain vs. The State, 20 Texas R. 355, 365; Peyton vs. Mosely, 3 Monroe's (Ky.) R., 80; Sedg. Stat. and Cons. Law, 415; Neill vs. Reese, 5 Texas, 33; 2 Blackf., 249.

In Cain vs. The State, 20 Texas, the question was, whether or not an act of the Legislature, which authorized the county courts of the State to grant a license for the retail of intoxicating liquors in quantities less than a quart, and imposing a license tax for such privilege, and prescribing a penalty for selling without such a license, was repealed by the provisions of the Penal Code of Procedure enacted at a subsequent period of the *same session*, and which contained a repealing clause, and after enumerating a great many

criminal laws of former sessions, concluded as follows: "And all other laws and parts of laws relating to crimes and punishments are hereby repealed;" and the court in an elaborate and well-considered opinion, held that the former act of the same session (and which related to crimes) was *not* repealed even by this broad and comprehensive language of the repealing clause, and that the conviction of the defendants under the former act for a violation of its provisions was good

At pages 358-365, of the above authority, Mr. Justice Wheeler, after quoting the statute, well says: "The material question to be determined is, whether this act was repealed by acts of a later date, passed by the same Legislature.

"In considering the question, it is important to observe that both the act supposed to be repealed and the supposed repealing act are acts of the same Legislature. This, it is conceived, renders inapplicable the ordinary rules of construction employed to determine whether former laws have been repealed by the enactments of a subsequent Legislature. By attending to this distinction, and applying the rule which governs the construction of acts passed at the same session, the question, we think, is free from difficulty. The rule is, that in the construction of acts of the same session, the whole must be taken and construed as one act, and to make a latter provision repeal a former, there must be an express repeal or an irreconcilable repugnancy between them; and then the latter will control. 3 Moore, 77; Sedg. on Stat. and Const. Law, 415. The case of Peyton vs. Moseley, determined in the Court of Appeals of Kentucky, is a stronger case, it is conceived, of the apparent repeal, by the Legislature, of a prior act, by one subsequently passed at the same session, than the legislation in question affords; and yet the court held there was no appeal. An act of the Legislature prescribed the form of a recognizance to be taken in certain cases concluding with the words 'witness my hand and seal.' A subsequent act of the same session abolished the use of seals, putting sealed and unsealed instruments on the same footing. It was insisted that the latter act repealed the former. But the court said: 'It is true, as observed by the court below, the expressions of this latter act are very broad, and if it had not passed at the same session with the former, it might, by the ordinary rules of construction, be

held to repeal the former *pro tanto*. But with regard to acts passed at the same session, we apprehend that the rules of construction are somewhat different. When they are compared together, they ought to be construed as one act on the same subject, and the presumption of so sudden a change or revolution in the minds of the Legislature ought not to be indulged. There ought to be an express repeal or an absolute inconsistency between the two provisions, to authorize a court to say that the latter had repealed the former. If both these provisions were in the same act, both must have had effect, if possible. Hence, the conclusion would be, that the recognizance directed to be taken with a seal, in which the bail stipulated for the principal, ought to be held as an exception to the general provision which dispensed with a seal. 3 Monroe, 80. And thus the court, instead of holding acts, of the same session, apparently repugnant, the one to repeal the other, gave effect to both, although in order to do so it became necessary to engraft the former upon or incorporate it into the latter act as an exception to its provisions."

Tested by the principals of the foregoing authorities, the resolution can not be considered as a repeal or modification of the confiscations provided for in the act. The utmost that can possibly be claimed for it is a modification or limitation of the sale of the real estate of a convicted traitor, to pay and satisfy any fine imposed by the court as a part of the punishment for treason, to the term of the life of the traitor. This is the source of its origin and the *ultima Thule* of its destination, and beyond this it can not go.

For the resolution having been passed not only at the same session of Congress with the act, but actually approved on the same day with the act, must be taken and considered as we have seen above, as a part of the same. And it must also be considered as in the nature of an exception or proviso to the act, and it is, therefore, perfectly demonstrable that it can not be extended to the confiscation part of the act, because neither that part of the act, nor any proceedings under the same are within either the words of the resolution or the reason of the same.

In the United States vs. Dickson, 15 Pet., 141, 165, Judge Story in speaking of a general law with a proviso, says: "We are led to the general rule of law which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that

where the enacting clause is general in its language and object, and a proviso is afterwards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause, and those who set up any such exception must establish it as being within the words as well as within the reason thereof." S. P. 40 Calif. 420, as to Exception.

But whatever be the nature and character of the resolution—whether it be considered as a part of the act and in the nature of an exception or proviso to the same, or as a separate independent act—certain it is that it can not be so construed as to operate a repeal or modification, by implication, of the belligerent rights of the government, as provided for in the confiscation part of the act without abolishing all distinction whatever between the different parts of the act. For war gives the right to confiscate the property of all public enemies (and all parties engaged in rebellion were such, Miller vs. The United States, 11 Wall. 268, 309), both as an instrument of coercion and as a means of support to the army. And upon the exercise of those rights no restrictions are imposed by the constitution or laws of nations. Miller vs. The United States, 11 Wall. 268. Those great powers and rights of the government then are surely not to be weakened or taken away by mere implication.

And this more especially as there is no occasion or necessity whatever for so construing the resolution in order that it may have full operation and effect both as to the literal import of the words used in the same as well as the intention of Congress in passing the resolution.

In re Tivnan, 5 Best & Smith 645 (117 Eng. C. L. 643) it was *held*, that the treaty between Great Britain and the United States, and the statute passed for giving effect to the same, by which persons guilty of "piracy" within the jurisdiction of either, and escaping and seeking asylum were, on demand, to be given up to justice, applied *only* to such acts as were piracy *exclusively* by the laws of the United States, and *not* to "piracy" *jure gentium*, because the latter was an offense against all nations and punishable any where, and it was not therefore to be supposed or presumed that the British government intended to abandon or surrender its right in common with all other nations to punish an act which was piracy by the law of nations.

This case, therefore, illustrates in a high degree the great extent to which a court will go in construing an act, to preserve and maintain any important right and power of its government in all its full force and efficacy. S. P. Brown vs. McLachlin, Law Rep. 4 P. C. 543, 552.

And it further shows that a court in construing an act will not allow itself to be tied up and controlled, where an important right of the government is involved, by any single word or expression, of however large signification and meaning, according to the ordinary import of the same, but will lay hold of any other word or expression in the act indicating, or which will justify, a reasonable presumption that the word or expression of largest import and signification, was not intended to be used or taken according to its ordinary and largest meaning, but in a more limited and restricted sense, so as to save any important right or power of the government. See The Hibernia, Law Rep. 4, P. C. 511, 519.

If the British court, then, was justified, as it no doubt thought it was, in actually *importing* the word *exclusive* into the treaty and statute passed for carrying the same into effect, so as to save the right of its government to punish "piracy" *jure gentium*, (and whose decision has not only the countenance of Mr. Justice Nelson and the other dissenting judges, *In re* Kane, 14 How. 103, 137, where in reference to the treaty he says: "It is a compact between the two nations in respect to a matter of national concern—the punishment of criminal offenders against their laws—and where the guilty party could be tried and punished only within the jurisdiction of the laws which have been violated," but has also been unqualifiedly acquiesced in by the government of the United States) how much more for like reasons and on like principles, if not upon higher considerations and upon larger principles, should it be held that even if the confiscation of enemies' property were within the import of the words of the resolution, that it is not to be presumed or supposed that Congress intended by the resolution (and that, too, by mere implication) to take away or diminish to any extent the war rights and powers of the government—the rights and powers of successfully prosecuting war, as specified in the act!

Surely, then, an enlarged meaning beyond the full import of the words of the resolution, as well as the intention of Congress in

passing the same, is not to be given by construction, and that, too, for the benefit of the enemies of the government, so as to impair and modify (by implication merely) the belligerent rights of the nation—the right of confiscating enemy property in time of war, as provided in the act, both as an instrument of coercion and as a means of support to the army in the field. See Cass vs. Dillon, 2 Ohio State 612.

No such rule of construction was ever adopted in relation to ordinary individual rights, much less with reference to the great rights and powers of a government engaged in a war of gigantic dimensions, and waged by its own citizens for its utter dismemberment and destruction. War existing, with its chequered phases of disasters, of victories and defeats, no judge certainly could be found who would construe one part of an act so as to make it operate a repeal or modification of another part of the same or a different act, providing for the exercise of the war rights and powers of the government—the highest of rights and the most unlimited of powers known to the constitution and the law. And if the resolution could not be so construed in time of war and when the nation was in the convulsive throes and agonies of revolution and with the result of the contest shrouded in the sombre and uncertain issues of war, how can it be otherwise interpreted after the war is at an end, and that, too, so as to enure to the benefit and advantage of those who waged the war, and to the prejudice and injury of those who stood by the government in the darkest hour of its need, and who invested their money in its support, and staked their purchases of enemy property on the final issues of the war? Are such rights, can such interests (and for such a purpose) be taken away or impaired by construction, by mere implication? We think not.

Repeals by implication are not favored even in ordinary laws intended for revenue, and will only be held to exist where the repugnance is positive, and then only to the extent of the repugnance. United States vs. Barrels of Spirits, 1 Dillon 49; 2 Abb. U. S. R. 305.

"There must be a positive repugnancy between the provisions of the new laws and those of the old; and even then the old law is repealed by implication only, *pro tanto*, to the extent of the repugnancy." Daviess vs. Faribain, 3 How., 646; Wood vs. United States, 16 Pet., 362.

"No public right can be taken away by mere inference or legal construction. It can only be by a plain grant." Jersey City vs. City of Buildon

And in Osborne vs. Nichols, in 13 Wall., 654, 662, Mr. Justice Swayne well says: "The doctrines of the repeal of statutes and the destruction of vested rights by implication are alike unfavored in the law. Neither is to be admitted unless the implication is so clear as to be equivalent to an explicit declaration. Every doubt should be resolved against a construction so fraught with mischief."

From this consideration of the authorities it would seem to be a self-evident proposition that the operation of the resolution can not be extended to the confiscation part of the act. For the confiscation part of the act is separate and distinct from the criminal part of the same. They are as separate and distinct in nature, character and purpose as if their provisions had been embodied in two separate statutes. The resolution says nothing about enemies' property. It imposes no restrictions upon the confiscation of enemies' property. It limits only the forfeiture of the real estate of the offender. It places no bounds to the confiscation of the property of public enemies. It leaves that right and power where it stood before the passage of the resolution.

The terms and provisions of the Resolution are peculiarly adapted to punishments and proceedings against offenders under the first four sections of the act, which alone constitute the criminal part of the same.

But it can have no sort of application to proceedings in confiscation, unless such proceedings are proceedings against offenders.

To so hold would be to make the confiscation part of the act unconstitutional; for if the proceedings in confiscation are proceedings against the property of offenders so as to be within the terms of the resolution, then it would follow as a matter of course that the property was confiscated for crime—was confiscated as the property of offenders and not as enemies' property, as declared in Miller vs. The United States, 11 Wall. 268.

If it was necessary, as it undoubtedly was, for the court, in order to sustain the constitutionality of the confiscation part of the act, to distinguish between the punishment of crime—the punishment of offenders—and the confiscation of enemies' property, is it not equally necessary in order to make the act constitutional, to distinguish, in the construction of the resolution between the punishment of crime—the punishment of offenders—and the confiscation of enemies' property?

In no other way or manner whatever, it seems to us, is it possible to sustain the constitutionality of the act. The distinction then between offenders and enemies must be observed in construing the resolution. For it would not savor of reason to say, in order to uphold and maintain the constitutionality of confiscation, that it was not for crime—was not the confiscation of the property of an offender—and then turn right round and say that the property of enemies as provided for in the act could only be confiscated for life because the Joint Resolution provides that the real estate of "*the offender*" shall not be forfeited by any punishments or proceedings under the act beyond the term of his natural life! Would not such a construction abolish all distinction in war between enemies and offenders? And would not enemies and offenders, by such a construction, become synonymous and mean one and the same thing? It seems to us that it would.

For if it be admitted or conceded that confiscation is in any sense the confiscation of the property of an offender so as to bring it within either the words or reason of the resolution, so as to limit the confiscation of enemies' property to a mere life estate, then the inevitable conclusion must be that the punishment of crime—the punishment of offenders—and the confiscation of enemies' property, as provided for in the act, are one and the same; and if so, the unconstitutionality of the act follows as a matter of course.

It will not do, then, to say that the confiscation of enemies' property, as provided for in the act is within either the words or reason of the resolution limiting the forfeiture of the real estate of "*the offender*" to a life estate, unless we are prepared to admit the inevitable consequence that must necessarily result therefrom, to wit: That the confiscation was for crime—was the confiscation of the property of an *offender*, and the confiscation part of the act therefore clearly unconstitutional.

For if the confiscation of enemies' property can be regarded for any purpose as the confiscation of the property of an offender, then it must, on the like principle and for the same reason, be regarded for any and every purpose as the confiscation of the property of an offender.

Its nature and character, under all circumstances and upon all occasions, must be fixed and permanent, and not as variable and un-

certain as the hues of the chameleon, whose colors assume that of every varying object of its touch. It can not be the confiscation of enemies' property to-day, as contradistinguished from the forfeiture of the property of an offender in order to make the confiscation part of the act constitutional, and at the same time or on another occasion be regarded as the "forfeiture of the real estate of *the offender*" as specified in the terms of the Joint Resolution.

It can not be invested, as occasion may require, with all the pomp and panoply of war and with the shield of enemies' property thrown around it to guard and protect it from successful assault and attack by its enemies, with the provisions of the constitution in relation to the punishment of offenders as the powerful weapons for its destruction, and then as soon as the assault and danger are over in that direction be stripped of its military armor and metamorphosed into the property of a crouching, trembling criminal, and clothed with the humiliating garb of an offender, so as to fall within the dominion and power of the Joint Resolution limiting the forfeiture of the real estate of the offender to the period of his natural life.

Upon all times, upon all occasions, under all circumstances, and in every possible phase of case that may arise in reference to confiscation it must either be regarded as the confiscation of enemies' property purely and simply, as such, or the forfeiture of the property of offenders. It must be one thing or the other. It can not be both, or even occupy at any time any middle ground between them for any purpose whatsoever under the act without at once rendering the same wholly unconstitutional and void.

In Craig vs. Kline, 65 Penn. St., 399, 414, it was held that even statutes in *pari materia* must be construed together, and that a subsequent statute with general words will *not* repeal a prior one, if such construction would make the latter act unconstitutional. The same rule is stated in Cooley on Constitutional Limitations, 184, where many of the leading cases on the subject are referred to.

And as is well said by Mr. Justice Strong in his most elaborate and well considered opinion in Miller vs. The United States, 11 Wall. 268, 309: "When a statute will bear two constructions, one of which would be within the constitutional power of Congress to enforce, and the other a transgression of the power, that must be adopted which is consistent with the constitution. It is always

a presumption that the Legislature acts within the scope of its authority."

Considering, upon the whole, then, that it has been fully demonstrated that the Confiscation act, as it is called, had two objects and purposes, and each of which was entirely separate and distinct from the other—the one the punishment of individual crime, which was an act of sovereign authority—the other the confiscation of the property of the public enemies of the country, which was an exercise merely of the belligerent rights of the government; that the first four sections of the act constitute alone the criminal part of the same and the only part of the act under which any one could either be considered or proceeded against as an offender; that the confiscation part of the act is for another and distinct purpose from that of punishing crime—of punishing individual offenders—and is merely and solely the exercise of the belligerent rights of the government—the right of confiscating enemies' property in time of war—and is as separate and distinct, both in nature and character from the punishment of crime—the punishment of individual offenders—as if the two provisions were embodied in two separate and distinct acts; that the one relates alone to the punishment of individual crime and the other *exclusively* to the confiscation of "enemies' property;" that the sole object and purpose of the Joint Resolution which was passed in connection with the act, were to obviate the President's constitutional scruples and objections to the bill, and which were, according to his view and interpretation of the constitution, that only a life estate, in realty, could be forfeited as a part of the punishment of treason; considering that a thing which is not within the reason of a statute is not within the same, even if within the words thereof; that the resolution, both according to the full import of the words used in the same as well as the intention of Congress in passing the resolution, applies *alone* to and limits the "forfeiture of the real estate of the offender" to the term of "his natural life;" that property under the act was not confiscated for crime—was not confiscated as the property of an offender, but as enemies' property; that enemies during a state of public war, even though they be citizens or subjects of the country with which they are engaged in war, can not be dealt with and punished as criminals—as rebels and traitors—during the war, but can only be con-

sidered and dealt with both as to property and person, according to the modern and well settled rule of civilized warfare, as enemies; that there are no restrictions upon the exercise of the war powers of the government—the powers of confiscating enemies' property—but that there are limitations and restrictions on the punishment of crime—the punishment of offenders; that a great right and power of the government are not even to be weakened or taken away by any expression or word in an act which, according to its ordinary meaning, is broad enough to include the same, where there is any other word or expression in the act which will authorize or justify a reasonable presumption, so as to save the right, that it was not the intention of the government by the use of a word or words of such large import, to part with any one of its great rights; that the resolution contains no express words of repeal or modification of any part of the act, and can therefore only operate a repeal or modification by implication (and which is a thing disfavored in the law, and only allowed from necessity of giving some effect to a statute) to the extent and to the extent only to which, by any fair and reasonable mode of interpretation, it is impossible to reconcile and make the two acts subsist together; that there is no instance in which an enlarged meaning, beyond the fair import of the words used in a statute, has ever been given to any act in order to make it operate (even on any pretense or suggestion that the spirit of the act is more comprehensive than its words import) a repeal of another statute by implication; and finally, considering that the rights of individuals (much less the great rights and powers of the government in time of war) are not to be taken away or impaired, and that too by implication, and that every doubt both as to a right which is sought thus to be impaired or taken away by implication, as well as the constitutionality of every act is to be resolved so as to save and preserve the right as well as at the same time maintain the constitutionality of the act, we must conclude that the Joint Resolution relates alone to punishments and proceedings against offenders under the criminal part of the act, and that it can not be extended so as to limit the confiscation of enemies' property to a mere life estate, without defeating, in a great degree, the two great objects and purposes of confiscation—the suppression of the rebellion and the support of the army in the field—as well as at the same time render the confis-

cation part of the act wholly unconstitutional. A construction that would lead to such results can not be adopted as a sound or proper interpretation of the resolution in connection with the act.

2. The *second* error assigned is, that even if a life estate only were confiscable, it was nevertheless error to hold that plaintiffs were entitled to recover, as the property was actually condemned and sold in fee, and such condemnation was not void in any event, but at most only *voidable* on error. Rec. 31–2.

The libel was filed "against the estate, property," etc., therein "described, and against all persons intervening for their interest therein in a cause of seizure and forfeiture," and the party named therein was averred "to be the owner of the same." It was further charged that the party alleged to be the owner of said property had done various acts and things bringing him fully within the terms and provisions of the act of July 17, 1862, entitled an act for the suppression of insurrection, etc.

The libel then further averred, "That by reason of the premises the property herein described and all the right, title, interest and estate of the said owner herein became and was forfeited to the United States, and ought to be forfeited to their use." Monition, etc., was prayed for "against said property and the owner and owners thereof, and against all persons intervening or claiming any interest therein, warning them," etc., "to appear and answer the libel, and after due proceedings had the same may be condemned and forfeited to the use of the United States." Rec. 26–30.

The record also shows a default as follows: "The delay allowed by law having expired and no claim or defense having been filed after due monition and proclamation, on motion of the district attorney it is ordered that all persons interested in the property seized be pronounced in contumacy and default, and the libel adjudged and taken *pro confesso*," etc. Rec. 31–2.

And after the default a decree of condemnation was entered in these words: "And the monition issued in this case having been heretofore returned, the usual proclamations having been made, the default of all persons duly entered and the law and the evidence considered, it is thereupon, on motion of the district attorney, ordered, sentenced and decreed by the court and his honor the District Judge, by virtue of the power and authority in him vested, doth hereby order, sentence and decree that

the two squares of ground with all the improvements thereon, the property of J. P. Benjamin, fully described in the libel of information on file, be and the same is hereby condemned as forfeited to the United States. And it is further ordered that the clerk issue a writ of *venditioni exponas* to the marshal of this district, returnable," etc.; "and that upon the return thereof the proceeds be distributed according to law," etc. Rec. 32.

It is therefore seen that the proceedings were instituted not only against the property but against all the right, title and interest of all persons whatsoever, and that an absolute decree of condemnation followed accordingly, and which was a full justification and authority to the marshal for selling the property in fee as he did.

The decree of condemnation is in the usual form of an absolute one, and just such a decree as it would have been necessary and proper to render if there had been no joint resolution in existence, or there had never been any controversy as to its being exclusively applicable to the criminal part of the act. Indeed, if the resolution had no existence, or if it had never been doubted, or had been determined that it only applied to the criminal part of the act, there certainly could be no question whatever that the decree of condemnation was an absolute one and without any qualification whatever. The fact, then, of the existence of the resolution, or that there has been or is any controversy as to its meaning, can not change the character of the decree from that of an absolute one, so as to make it one for life only.

In Castrique vs. Imrie, Law Rep. 4 H. L. 414, it was *held* by the House of Lords, affirming the judgment of the Exchequer Chamber, that even a decree rendered in a case *in personam* and *in rem*, against the captain for a debt contracted for the ship, and with privilege on the ship and ordering the latter to be sold, was an absolute decree for the sale of the ship, and that the sale under the decree passed an absolute title to the purchaser, notwithstanding the plaintiff was a mortgagee before the decree and sale, and whose claim as mortgagee had been erroneously rejected by the court decreeing the sale.

Had less than a fee been intended to be condemned and sold, the judgment would have been a qualified one for life, as in the case of The King vs. Buckingham, 1 Keble 46, where the judgment was that the real estate of the party should be forfeited for life. And so in

Tyler vs. Defrees, 11 Wall. 331, and all other confiscation cases in the District of Columbia, where a less estate than a fee was intended to be condemned and sold, the judgment was one for life only.

In Griffith vs. Frazier, 8 Cranch, 9, 28, Chief Justice Marshall in reference to a grant of administration without any restrictive words on an application merely "for administration during the absense of the executor" said it was an "absolute grant," and that "the grant itself is without limitation."

It is true the grant of administration was considered void, but was so regarded on the ground that the court had no jurisdiction or authority to make any grant of administration whatever in the case. This case, therefore, is a striking illustration that a judgment without any words of limitation or restriction must be regarded as an absolute one, even though a limited one may have been applied for.

But not only were the pleadings framed for an absolute decree, and not only did the District Court decide that the property was confiscable in fee as enemies' property, and render a decree accordingly, but in every case in which a writ of error was taken to the Circuit Court it was specially assigned for error (and as may be seen in several of those cases now in this court) that the property was condemned in fee when only a life estate was confiscable.

We have, then, not only the facts that the pleadings were framed for an absolute decree and an absolute and unqualified decree pronounced accordingly, but the further facts that not only the advocates but the opponents of the constitutionality of confiscation understood the condemnations in New Orleans to be in fee, and the latter accordingly assigned that as a separate and special ground of error.

And a party who assigns a matter as error surely can not afterward be heard to say that the matter he assigned for error does not exist. And this on the principle that a party who asserts any matter of fact in a court of justice and claims any benefit therefrom (as for instance where a party sets up a void or voidable judgment in bar of an action), he necessarily affirms the existence of that fact, and is *eo instanti* estopped to deny or impeach it afterward. Hooper vs. Hubbard, 97 Mass., 175; 102 Mass., 239; Henderson vs. Staniford, 105 Mass., 504, 507; Bailey vs. Bailey, 8

Wright, 247; Martin vs. Ives, 17 S. and R, 564; 2 Smith's L. C. 818; 6 Am. Ed.

Aside, however, from this view of the matter, we think there can be no doubt that the decree of condemnation can not be considered otherwise than an absolute one. A somewhat different view, however, seems to have been taken of the matter in Bigelow vs. Forrest, 9 Wall.

But whether or not the facts in that case were the same as those in this, we are clearly of the opinion that the decree in this case can not be regarded in any other light than as an unqualified decree of condemnation.

Neither the proceedings or judgment has any reference to a qualified estate. On the contrary the pleadings throughout proceed on the supposition that an absolute estate was to be taken. The proceedings are not only against the property, but all the right, title, interest and estate of the owner, and of all persons whatsoever. The pleadings are therefore inconsistent with, as well as wholly irreconcilable, with the idea that a less estate than a fee was confiscable.

It was the "Two squares of ground, the property of J. P. Benjamin," that was condemned and sold and not any qualified estate in the same. It was, therefore, as absolute and complete a condemnation and sale of the thing itself as that in Castrique vs. Imrie, Law Rep., 4 H. L. 414, which was held to pass an absolute title.

"The term property as applied to lands," (says Chief Justice Marshall, in Soubard vs. United States, 4 Pet. 511) "comprehends every species of title, incohate or complete."

And Chief Justice Spencer, in Jackson vs. Hansel 17 J. R. 281, 283, said: "Property is defined to be the highest right a man can have to anything; being used for that right which one hath to lands or tenements, goods or chattels which no way depend on another man's courtesy." It is therefore seen what was the nature and character of the interest which it was sought to have condemned. And if there was any doubt as to the unqualified nature and character of the decree from the words used in the same, that doubt would at once be removed by reference to the nature and character of the pleadings. For in cases of doubt, decrees of condemnation are interpreted with reference to the nature and character of the preliminary proceedings.

In Hobbs vs. Henning, 17 Com. Bench (17 J. Scott, N. S.) 791, 827; (112 Eng. C. L., 791, 826) Chief Justice Earle, in reference to ascertaining the meaning of a decree of condemnation in a case of prize, said: "The meaning may be ascertained by adducing in evidence the preliminary proceedings and other matters referred to in the judgment."

So, in Dalglish vs. Hodgson, 7 Bing., 495, (20 Eng. C. L. 216); 5 M. and P. 407, the circumstances under which a ship entered the river Plate were admitted in evidence to show the nature of the judgment.

So, where the ground of condemnation is doubtful, the court will look into the proceedings to ascertain the grounds of the sentence. 3 Boss. & Pul., 525; Bolton vs. Gladstone, 5 East. 155; Buring vs. Royal, Ex. A. Co, 5 East. 99. And if a ship be condemned generally as lawful prize, no special ground being stated, it is to be presumed that it proceeded on the ground that the property was that of enemies. Sallouci vs. Woodmas, 3 Doug. 345; (26 Eng. C. L. R. 135); Kindersley vs. Chase Park Ins. 743.

Considering the decree, then, in connection with the pleadings (even if there were any room for doubt as to the meaning of the same from the words in which it was rendered) there can be no question, it seems to us, that it can not but be considered as a condemnation in fee. It certainly would be a sufficient justification of the marshal in a suit for damages for having sold more than a life estate. The question in that case, as in the present inquiry, would not be as to whether the judgment under which he sold in fee, was right or wrong, but whether or not it was the judgment of a court of competent jurisdiction; and this brings us to what we consider the main and material part of this branch of the case.

Jurisdiction, according to all the authorities, is the right and power given by law to hear and determine a cause. Grignon's Lessee vs. Astor, 2 How. 338; State of Rhode Island vs. The State of Massachusetts, 12 Peters 718; United States vs. Aredondo et al., 6 Peters 709.

When, therefore, it is said that the jurisdiction of a court may always be inquired into, it must be remembered that this applies *only* to jurisdiction over the subject matter. Congar vs. Galina, etc., 17 Wis. 477; Dynes vs. Hoover, 20 How. 65, 80, 81.

For it is only where a court has no jurisdiction whatever over the subject matter, but assumes it; or where an inferior court has jurisdiction, or a superior court, having only a *special statutory* jurisdiction or power conferred for a special purpose, and the manner of its action is specially prescribed in the statute for the exercise of the power which is not within its general jurisdiction (and is therefore to be considered and regarded as an inferior court with reference to the exercise of the special power), but has failed to observe the rules prescribed by the statute for the exercise of the power, and the non-observance of which renders the proceeding *coram non judice*, that a judgment or decree can be disregarded and treated as a nullity in a collateral action. Hobart vs. Frost, 5 Duer 67; Dynes vs. Hoover, 26 How. 65; Kemp's Lessee vs. Kennedy, 5 Cranch 173; Butler vs. Potter, 17 J. R. 145; Knowles vs. Muscatine, 20 Iowa 249; Easton v. Colender, 11 Wend. 90, 95; Henderson vs. Brown, 1 Caines 192; Grignon's Lessee vs. Astor, 2 How. 341; Griffin vs. Mitchell, 2 Cow. 49. Hence the importance of ascertaining what jurisdiction is.

It is "*coram judice*" whenever a court has authority, by law, to act. 6 Peters 709.

If the court has authority, by law, for its acts or judgment, then it has jurisdiction; but if it is not authorized to act at all in the case, its judgments and decrees are *coram non judice*. Voorhies vs. Bank of the United States, 10 Peters 474; Shiver's Lessee vs. Lynn, 2 How. 43, 60.

In the State of Rhode Island vs. The State of Massachusetts, 12 Pet. 657, 718, the Supreme Court of the United States says:

"Jurisdiction is the power to hear and determine the subject matter in controversy between the parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on the case before the court their action is judicial or extra judicial, with or without the authority of law to render judgment or decree upon the rights of the litigant parties.

"If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which it is the right of the case, is judicial action, by hearing and determining it. 6 Peters 709; 4 Russ. 415; 3 Peters 203-7."

In Grignon's Lessee vs. Astor, 2 How. 319, 338, the court says:

"Jurisdiction has been thus defined by this court:

'The power to hear and determine a case is jurisdiction; it is *coram judice* whenever a case is presented which brings this power into action; if the petitioner presents such a case in his petition, that on a demurrer the court would render a judgment in his favor, it is an undoubted case of jurisdiction; whether in an answer denying and putting in issue the allegations of the petition, the petitioner makes out his case, is the exercise of jurisdiction, conferred by filing a petition containing all the requisites, and in the manner required by law.' 6 Peters 709. 'Any movement by a court is necessarily the exercise of jurisdiction; so, to exercise any judicial power over the subject matter and the parties, the question is whether, on the case before the court, their action is judicial or extra judicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action by hearing and determining it.' 12 Peters 718; S. P. 3 Peters 205."

From this consideration of the authorities, it is seen that *jurisdiction* is the power and authority given by law to proceed to hear, try and determine a suit or controversy.

Whenever a case, then, is presented to a court in such a form or way, that it has the right and authority by law to proceed to hear, try and determine the same, jurisdiction has most unquestionably been acquired by the court. Shroyer vs. Richmond, 16 Ohio State 455; Florentine vs. Barton, 2 Wall. 216; Comstock vs. Crawford, 3 Wall. 404, 406; Grignon's Lessee vs. Astor, 2 How. 319, 336, 339; Mulford vs. Stanzenboche, 46 Ill. 307. Jurisdiction therefore precedes and is entirely separate and distinct from that of its exercise, that is from all that takes place in a case after jurisdiction, or the power to hear and determine has been acquired.

All that takes place, then, in a case, after jurisdiction has once attached, is but the exercise of jurisdiction, which must not be blended or confounded with the question of jurisdiction itself in determining in any given case whether the court did or did not have jurisdiction of the subject matter of the suit or controversy. De-

quindre vs. Williams, 31 Indiana R. 456; Dynes vs. Hoover 20 How. 65, 80, 81; 24 Indiana 325.

We have thus shown what jurisdiction is, with a view to keep it separate and distinct from that of its exercise or all that follows and takes place in a case after jurisdiction has once attached.

The district and circuit courts of the United States, though of limited jurisdiction, are not inferior courts in the technical sense of that term. Miller vs. The United States, 11 Wall. 308; Kennedy vs. Georgia State Bank, 8 Howard 586; Ex parte Watkins 3 Pet. 193; Chemung Bank vs. Judson, 4 Selden 254; Wright vs. Marsh, 2 Iowa, 94; Wood vs. Moran 1 Sum., 580; Skillern's Executors vs. May 6 Cranch, 267; McCormick vs. Sullivan, 10 Wheat. 199; Baldwin vs. Hale, 17 J. R, 272; Reed vs. Vaughan, 15 Missouri, 137, 141–2; Rowan vs. Holcomb, 16 Ohio, 463, 465; Thompson vs. Lyle, 3 Watts Serg. 166.

They are to be regarded and considered as domestic courts of superior and general jurisdiction as to all matters over which they are by the constitution and laws of the United States invested with jurisdiction and authority. Miller vs. The United States, 11 Wall., 299, 301; Gillett vs. Powell, 1 Spear's Eq. R., 142, 144; Ex parte Hall, 5 Nevada, 158; Adams vs. Way, 34 Cal., 413; Reed vs. Vaughan, 15 Missouri, 137, 141–2; Bowan vs. Holcomb, 16 Ohio, 463, 465, and foregoing authorities.

For it is well settled that limitation of power does not necessarily imply inferiority. Peacock, vs. Bell, 1 Saunders, 15.

And the rule is that where a general authority is given by statute to a superior court over all matters of a given class, the court, in the excercise of the new power or authority thus conferred, will not be regarded as an inferior court. Harvey vs. Tyler, 2 Wallace, 328, 342; Voorhies vs. Bank of the United States, 10 Pet., 449; Grignon's Lessee vs. Astor, 2 How., 319; Kemp's Lessee vs. Kennedy, 5 Cranch, 173; 18 New York, 592; 28 ib., 653; 34 Cal., 412–13; Reed vs. Vaughan, 15 Missouri, 137; Rowan vs. Holcomb, 16 Ohio, 463; Miller vs. The United States, 11 Wall. 268, 299–300.

Such being the nature and character of the courts of the United States, it follows that even if the Joint Resolution was a modification of the confiscation portion of the act, so as to limit the confiscation of enemies' property, under the same, to a mere life estate,

still, as the district courts of the United States had jurisdiction of the subject-matter of confiscation under the act of the 17th July, 1862, and a consequent right to condemn the property in some form (either in fee or for life), the condemnation in fee is not void, in any event, but at most only voidable.

The question of jurisdiction does not depend upon the fact of the correctness of the judgment, but upon the fact as to the right of the court or tribunal to enter upon the inquiry as to what, if any, judgment should be rendered in the case; in other words, upon the right to render any judgment at all. If the court or tribunal has the right to proceed to hear, try and determine any matter, or to render a judgment upon any given state of facts, then it is an undoubted case of jurisdiction, without any reference whatever to the fact as to whether the judgment is right or wrong. The correctness or incorrectness of the judgment is not a matter for consideration in resolving the question of jurisdiction, but the fact as to the right to render any judgment at all in the case. This is the criterion by which the line of jurisdiction is to be determined, and separates jurisdiction from a mere usurpation of power; the line which separates erroneous or voidable judgments—that is, judgments which are liable to be reversed only on error or other appropriate proceeding, as may be provided by law—from judgments which are absolutely void and may be so declared by any court or tribunal in any direct or collateral proceeding whatsoever.

"It is only where a judge or court has no jurisdiction of the subject matter of the proceeding or action in which an order is made or judgment rendered that the order or judgment is wholly void." Hobart v. Frost, 5 Duer, 673.

In the case of Butler vs. Potter, 17 J. R., 145, the court says: "The justice had jurisdiction to give judgment for costs; although he was limited as to the amount, and gave judgment for more than he ought, it was an erroneous, not a void, judgment; the case of Prigg vs. Adams, 2 Salk., 674, is in point." * * * "The distinction is this: Where the justice has no jurisdiction whatever, and undertakes to act, his acts are *coram non judice*, but if he has jurisdiction, and errs in exercising it, then the act is not void, but voidable only."

In Henderson vs. Brown, 1 Caine's Rep., 102-3, where assessors were sued in trespass for assessing a theatre as a dwelling-house,

Mr. Justice Kent said: "I distinguish this case from those cases in the English books, where the assessors and collectors of their land-tax have been held responsible. The assessors had no authority at all over the subject-matter which they included in the tax. Here the theatre was required to be assessed by the assessor; if a dwelling-house, then as such; if not a dwelling-house, then as a lot of ground, with due regard to the improvements thereon. * * * The assessors had jurisdiction of the subject-matter. They were bound to assess that building in the one view or the other; and in the exercise of that duty, it is alleged and admitted that they did not exercise their judgment duly. But this is very different from the case in which they were not to exercise any judgment at all over the subject, in which they had stepped out of their path, and taken cognizance of a subject not at all delegated to them. In such an instance their proceedings would have been truly *coram non judice*, and they trespassers. Here the subject was by law *sub judice*, and the grievance is a mere error or mistake by them while in the exercise of a lawful jurisdiction."

And in Easton vs. Calendar, 11 Wend., 90, it was *held* by Mr. Justice Nelson that, notwithstanding the trustees in apportioning a school tax among the taxable inhabitants, must apportion only the sum voted, and not include therein, in making the apportionment, the *per centage* allowed by law to the collector for collecting the tax, the trustees who had made up the apportionment upon the sum voted and the per centage, although erroneous, were not liable in trespass for causing property to be sold in the collection of the tax.

And the reason assigned for this decision was, that the trustees had jurisdiction of the subject-matter of the apportionment of the tax, and that, consequently, though their action in the matter in assessing more than the law allowed was erroneous, the assessment was not absolutely void, but only voidable, and therefore valid till reversed or set aside in the manner provided by law.

The distinction is between the assessment and collection of a tax where the party or property was not liable to taxation in any form or to any amount whatever, and where he or it is liable in some form and to some extent to be assessed and taxed.

In the former class of cases, as where assessors undertake to assess a person for personal estate, who is not a resident of the

place where assessed, assessors and collectors of the tax have been held responsible for the damages which ensued on the ground that, as the assessors had no jurisdiction or authority to assess any tax at all, the assessment was wholly illegal and absolutely void. Mygatt vs. Washburn, 15 N. Y. 316; Hannibal and St. Joseph Railroad Company vs. Schackett, 30 Mo. 550; State vs. Schackett, 37 Mo. 280; 43 ib. 481; People vs. Supervisors, 11 N. Y. 563; Freeman vs. Wremey 15 Picke, 44; Lyman vs. Fishe, 17 ib. 231; Bailey vs. Buel, 59 Barb. 158.

But where the party or property was liable to taxation in some form and to some extent, assessors and collectors of the tax have always been exonerated from liability for assessing and collecting the tax, on the ground that the assessors had jurisdiction, even though their assessment was erroneous as to the amount and manner of assessing the tax. Glasgow vs. Rowel, 43 Mo. 479; The St. Louis M. L. Ins. Co. vs. Charles, 47 Mo. 462, 466–7; Weaver vs. Devendorf, 3 Denio, 117; 3 Comst., 466; Van Rensellaer vs. Whitbee, 7 Barb. 133.

In Knowles vs. The City of Muscatine, 20 Iowa R., 248. it was held that an order of a court establishing a road of greater width than was authorized by the statute was not void, but irregular or erroneous merely, and was valid until reversed.

At page 249 of the above case, the court says: "The inquiry is, was the order void or erroneous merely? It appears that the country court *had full and complete jurisdiction over the parties and the subject-matter*. The order made was never appealed from, but remained in full force and virtue. Under such circumstances we incline to the opinion, and so hold, that the order was not void, but irregular or erroneous merely."

So a judgment for a greater amount than the *ad damnum* laid in the writ is not void but only voidable. It is valid until reversed. Smith vs. Keene, 26 Me 411; Grosvenor vs. Danforth, 16 Mass. 74.

Even in *criminal* cases a judgment imposing a greater amount of punishment than is authorized by law is not void but only voidable on error. The King vs. Ellis 5 B. and Cress. 395, (11 Eng. C. L. 259); Shepherd vs. Commonwealth, 2 Met. 419; Elliott vs. The People, 13 Mich. 365.

The reason why the judgdments in the above cases were merely

erroneous and not void, is because of the fact that the respective courts had jurisdiction of the subject-matter—had the right by law to render a judgment of some kind, and the act of rendering judgment for a greater amount of punishment than was authorized by law was but an erroneous exercise of a lawful jurisdiction.

In Rex vs. Ellis, 5 B. & Cres. 395, "the Sessions, on a conviction of petty larceny had passed sentence of transportation for fourteen years, having power only to transport for seven," and yet the judgment was reversed as erroneous merely and the prisoner discharged. If the court could have treated the judgment as void on the ground of an excess of jurisdiction, then it would have followed that there was no judgment in the case, and the prisoner, instead of being discharged, would, according to the ruling in Rex vs. Henworthy, 1 B. and C. 711, (8 Eng. C. L. 196), in which no judgment had been given, but only an order had been made, have been remanded for judgment.

But as the judgment was reversed and the prisoner discharged it is clear that the judgment could not be regarded as a void judgment, as in excess of jurisdiction, but only as an erroneous judgment in the exercise of a lawful jurisdiction. For the judgment of a court can only be regarded as void when it has no authority by law to render any judgment at all in the matter in which it assumes to act.

And in the case of The King vs. Bourne et al., 7 Ad. and El., 58 (34 Eng. C. L., 36), judgment of transportation was passed upon all the parties, none of whom were subject by law to any but capital punishment, yet the judgment was reversed as *erroneous* merely, and not on the ground that it was void.

Patteson, J., in answer to the argument that the judgment might be regarded as a nullity, and the case consequently remanded for the proper judgment, said: "If we were to hold it a nullity because it is erroneous, the same might be urged whenever an erroneous judgment came before us."

We think, therefore, that what is said in Bigelow vs. Forrest, 9 Wall., with reference to the court transcending its jurisdiction in condemning the fee, must be understood and taken with the qualification that it was only such an exercise of jurisdiction, as would authorize its reversal on error. If such be not the case, then courts

could only have jurisdiction to render correct judgments, and if so, then all distinction would be abolished between void and voidable judgments prior to any reversal on error. Indeed, no reversal on error would be necessary in any case if the above distinction is not observed.

"It is not," (says the court in Chase vs. Christianson, 41. Cal. 253, 256), "the particular decision given which makes up jurisdiction, but it is the authority to decide the question at all. Otherwise all distinction between erroneous exercise of jurisdiction upon the one hand, and a total want of it on the other, must be obliterated."

In Godard vs. Gray, Law R. 6 Q. B. 139, it was held that a judgment rendered in France upon an English contract, the record of which showed on its face that the judgment proceeded on a mistake as to the English law, was nevertheless conclusive when sued on in an English court. So if it were a fact that the court mistook the law in the confiscation cases and erroneously condemned a fee when only a life estate was confiscable, the judgment of condemnation must be conclusive in a collateral action. For the act of rendering judgment was but the exercise of jurisdiction, which attached as soon as the property was seized and the libel filed for its condemnation. It can not, therefore, be said that the court in condemning the fee transcended its jurisdiction. For if it be conceded that only a life estate was confiscable, still the judgment of the court condemning the fee is the judgment of a court of competent jurisdiction, because it had the right by law to condemn the property to some extent—to that extent to which, in the exercise of its judgment it thought the law authorized it to be condemned—and its judgment, therefore, whether right or wrong, must be regarded as rendered in the exercise of a lawful jurisdiction, and is, consequently, conclusive in a collateral action.

It does not fall within the principle of that class of cases in which judgments were rendered by courts where they had no right or authority by law to render any judgment at all, and of course might be disregarded collaterally.

A mistake as to the amount of the judgment might be an error as to the law, so as to authorize its reversal on error, but it would not render the judgment an absolute nullity, because it is not a matter pertaining to the jurisdiction of the court, but relates alone to its ex-

ercise. For, if the correctness or incorrectness of a judgment is to be the test of jurisdiction in one case, it must equally apply in all other cases, and the consequence would be that every erroneous judgment must be regarded as void, as courts could only have jurisdiction to render correct judgments.

In Walker vs. Wright, 30 Iowa 310, 325--6, Mr. Justice Miller, in giving the unanimous opinion of the court, well says: "A judgment rendered for more than is claimed by the plaintiff is erroneous, and will be corrected or reversed, on writ of error or appeal. But an error in a judgment, whether in law or in fact, which does not go to the jurisdiction of the court, can only be taken advantage of by writ of error or appeal. It was so held by this court in Milne vs. Van Buskirke, 9 Iowa 558. * * * * * *

"'An error, whether of law or fact, does not render a judgment void. The error does not go to the jurisdiction of the court rendering the judgment' So in this case the rendition of the judgment for more than was claimed was an error, but not such as affected the jurisdiction of the court rendering the same.

"To the same effect see the following cases: Mills vs. Duyree, 7 Cranch 481, 487; Austin vs. Charlestown Female Seminary, 8 Met. 196; Hampton vs. McConnel, 3 Wheat. 204; Bissel vs. Briggs, 9 Mass. 462; Wernway vs. Pauling, 5 Gill and Johns 500; Reed vs. Ross, 1 Bald. 36; Greene vs. Summerville, 1 Pet. C. C. 74; Spencer vs. Brockway, 1 Ohio 259; Goodrich vs. Jenkins, 6 ib 43; Evans vs. Justine, ib. 117; Evans vs. Tatem, 9 S. and R. 252; Benton vs. Burgot, 10 ib 240; Maxie vs. Wright, 2 Vt. 269; Davis vs. Connelly's Exr., 4 B. Mon. 136."

"In this collateral action, said the court in Martin vs. Barron, 37 Mo. 305-306, in answer to an object that a judgment relied on was void, "its conformity to law can not be inquired into."

In Hughes vs. Meeks, 10 Calif. 110, it was held that although a probate judge had no right by law to accept the assignation of an administration until he has settled his account with the estate, yet, having exercised the right so to do, the error of the court was merely voidable, and *not* void, and could not be taken advantage of collaterally; because where the jurisdictional facts exist, such as the death and residence of the intestate in the country, every subsequent movement of the court is the exercise of jurisdiction over

the subject matter and the parties who have been brought properly before it.

But if it were conceded that the determination of the question as to whether a fee or a life estate only was confiscable, was a matter pertaining or going to the jurisdiction of the court, then, as it was a matter that the court necessarily had the right to determine for itself, its determination of even the question of its own jurisdiction, according to all the authorities, is conclusive until reversed, and can not be questioned in a collateral action. Hudson vs. Guestier, 6 Cranch 281, 284–5; Fisher vs. Hepburn, 48 N. Y. 41, 53; Bradley vs. Fisher, 13 Wall. 351–2.

In Bradley vs. Fisher, 13 Wall. 351, 352, this court well says: "A distinction must be here observed between excess of Jurisdiction and the clear absence of all jurisdiction over the subject matter; where there is clearly no jurisdiction over the subject matter, any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject matter is invested by law in the judge or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend."

And in Brown vs. Brown, 50 N. Hamp., 538, 555, the court in speaking of a mistaken or an erroneous exercise of jurisdiction said: "But the error and defect seem to have arisen by reason of a mistake of the tribunal with regard to the exercise of their power under the statute. The defect would seem to range itself under the head of irregularities rather than as a result of action outside and beyond the jurisdiction of the selectmen. Proctor vs. Andover, (42 N. H.) 351 before cited; Hillard on New Trials, 547–8."

In Coltman vs. Beardsley, 38 Barb., 30, 51–2, Mr. Justice Rosecrans says: "When the jurisdiction of an inferior tribunal depends upon a fact which such tribunal is required to ascertain and determine by its decision, such decision is final until reversed in a direct proceeding for that purpose. (Brittain vs. Kennard, 1 Brod. & Bing., 432; S. C., 4 Moore, 50; 12 Pick., 572, 583; Ex parte Watkins, 3

Peters, 202, 209; Supervisors of Onondaga Co. vs. Briggs, 4 Denio, 33, 34; 11 Wend. 95; Phil. Ev. ch. 1, sec. 5, note 292; 2 ib., Edw ed., 15 and fol.; Weaver vs. Devendorf, 3 Denio, 117, 120, and authorities cited. Broom's Leg. Max., 56 to 66; Henerson vs. Brown, 1 Caine's, 90; Kent and Livingston, Js.) The test of jurisdiction in such cases is whether the tribunal has power to enter upon the inquiry, and not whether its conclusions in the course of it were right or wrong. 1 Q. B. Rep., 66; Rex. vs. Bolton (41 Eng. C. L., 439); Cove vs. Mountain, 1 Mann. & Gr. 257; (39 Eng., C. L. Rep., 432.")

So in the confiscation cases, the test of jurisdiction is not whether the decision condemning the fee was right or wrong, but whether or not the court had power to enter upon the inquiry as to whether or not the property proceeded against was liable to be condemned to any extent, and if so, to what extent. And there being no doubt that the court possessed such a power, the judgment condemning the fee was but the exercise of jurisdiction, and if wrong, can only be regarded as erroneous and not void in a collateral action.

"There are, it is true (says the court in McNeil vs. Bright, 4 Mass. 303), instances in which judgments of court are void, and may be so considered without reversal; but it is only in cases where from the judgment itself, it is apparent that the court had not any jurisdiction." S. P. Latham vs. Briggs, 1 Wms. Vt. R. 27; Boker vs. Chapline, 12 Iowa, 204, 206; 6 Hump. 444; 8 S. & M., 425; 8 Iredell, 14.

And in Hendrick vs. Whittemore, 105 Mass. 23, 27, it is said:

"But the decree of a court of general jurisdiction is invalid, if it be shown that it had no authority over the cause in which it assumed to act. It is then not a judicial proceeding. Folger vs. Columbian Insurance Company, 99 Mass. 267."

Mr. Justice Miller, in Harvy vs. Tyler, 2 Wall., 328, 346, in answer to the objection that the judgment exonerating land for taxes, accrued after the passage of the statute, was null and void, because the act only authorized an exemption for taxes accrued before the passage of the act, said: "If this were true, we do not feel sure that, under the principles just considered, it would invalidate the judgment of the court. It would be a mistake as to the law, which would make the judgment erroneous; but would it, therefore, be void?"

"If its sentence" (says the court in Dynes vs. Hoover, 20 How., 81) "be a deviation from it" (the statute), "which we do not admit, it is not absolutely void."

So, if the judgment condemning the fee were a deviation from the statute it might be a mistake as to the law, but it would not make the judgment void, and consequently no advantage could be taken of that error in a collateral action.

In Chase vs. Christian and 41 Cal. 253, and Bond vs. Pacheco 30 Cal. 530, it was *held* that a judgment entered by default for a larger amount than was claimed was valid until reversed and could not be treated as void in a collateral action notwithstanding the statute under which the judgment was entered expressly provided that judgment in such a case should not be entered for more than the amount claimed in the suit, because the entry of the judgment was but an erroneous exercise of a lawful jurisdiction.

And in Grignon's Lessee vs. Astor, 2 How. 319, 340-1, Mr. Justice Baldwin, in speaking of the force and effect of a judgment and the protection of purchaser under the same, well said: "A purchaser under it is not bound to look beyond the decree; if there is error in it of the most palpable kind, if the court which rendered it have in the exercise of jurisdiction disregarded or misconstrued the plain provisions of the law which gave them power to hear and determine the case before them, the title of a purchaser is as much protected as if the adjudication would stand the test of a writ of error."

From this consideration of the authorities it is evident that confiscations in fee can not, in any event, be regarded as void, but, at most, only *voidable*, for there can be no doubt that the court had jurisdiction of the subject matter of confiscation and only erred, *if at all*, in the construction of the law as to whether a fee or a life estate should be condemned.

3. The third error assigned is that the court erred in holding that the property condemned and sold was subject to the mortgage in the hands of the purchaser at the judicial sale of the same.

The first point for consideration under this assignment of error is the jurisdiction of the court, which was assailed (but conceded in the opinion) in the State court, with a view to defeat the operation and effect of the decree of condemnation and sale.

It is alleged in the libel of information (Rec. 26) filed by the

District Attorney, "That Cuthbert Bullitt, Esq,, Marshal of the United States for the said District, under written authority given him by said attorney, in compliance with written instructions issued by the Attorney General of the United States to the District Attorneys thereof, and by virtue of the act of Congress" approved, etc., had "seized as forfeited to the United States, at," etc., "within said District, and within the jurisdiction of this court, a certain square of ground situate in the town of Hurtsville, parish of Jefferson, with all the improvements thereon designated," etc., and which description fully identifies the square as the one against which the alleged mortgage is sought to be enforced.

It further appears from the record of the proceedings which were had in the United States District Court that after the return and due publication of monition in said case, a regular default was entered and a *pro confesso* taken, and all the allegations of the libel taken for confessed as against all persons having or pretending to have any right, title or interest whatsoever in or to the property therein described. Rec. 31–2.

It is therefore seen that the fact of seizure and subjection of the property to the jurisdiction of the court which condemned the same is judicially established by the record and judgment of the court, and can not be contradicted or explained in a collateral action by parol evidence.

In Miller vs. United States, 11 Wall. 268, 301, 303, 304, the court says: "The default appears to have been duly entered. Were this, then a proceeding according to the forms of a common law action, the facts averred by the information would be considered as established or confessed, and everything found for a judgment. The effect of a default to appear in an admiralty or revenue proceeding, is ordinarily the same as in other actions of law. It is a virtual confession." * * * * * *

"It thus appears that in revenue cases, as in admiralty, default entered establishes the facts averred in the libel or information as effectively as they can be established on hearing, and warrants a decree of condemnation if the information contains the necessary averments." * * * * * *

"But in this case there was a default. After the default there was no fact to be ascertained. The province of a jury in suits at

common law is to decide issues of fact. Where there are no such issues there can be nothing for a jury to try."

A default is an admission of the facts stated in the complaint or indictment. 12 Min., 221 ; The State vs. Richmond, 6 Fost., 247.

So, where a bill is taken *pro confesso*, the party is as much bound as if he had appeared in open court and filed an answer admitting the truth of the allegations of the bill throughout. 4 Gilman R., 511, 517; 11 Alab. 668; Sinclair vs. Williams, 8 Iredell's Eq. R., 335; Attorney General vs. Carver, 12 Iredell, 231.

"He who confesses a judgment, or suffers it to pass by default," (says Chancellor Kent in French vs. Shotwell 5 J. Ch. 565) "is concluded from defense, according to the general language of the authorities. (Middleton vs. Hill, Cro. Eliz. 388; Buch vs. Ever, Str. 1043; Cases temp. Hard. 220, S. C.; Mathews Lewis, 1 Anst. 7; Lord Ch. in 14 Vesey, 31; Lord Thurlow, in Scott vs. Nesbit, 2 Bro. 641.)"

And in the case of a judgment by default it will be presumed that the court passed upon the sufficiency of the notice. Muscatine vs. Funck, 18 Iowa 469; Bonsal vs. Islett, 14 Iowa 309; Cullen vs. Ellison, 13 Ohio State 354.

"The petition," (said the court in Pursley vs. Hayes, 22 Iowa 32), "alleged the requisite jurisdictional facts and the truth of these averments was necessarily found in making the order."

It is therefore seen that a default and *pro confesso* in a confiscation case establishes all the facts alleged in the libel or information, and as fully warrants a judgment of condemnation as if all the facts alleged in the same had been found to be true upon a regular trial or confession of the same.

The *fact* of *seizure*, then, though a jurisdictional fact, being alleged in the libel, is as fully and completely established by the default as though the same had been confessed in open court by the party, or put in issue by the pleadings, and found to be true upon a regular trial of the case. The jurisdictional fact of seizure, then, being established by the default, it is as conclusively established as any other fact which was involved in the case, and can not be controverted in a collateral action.

It must, therefore, be taken to have been *incontrovertibly* estabtablished by the *default and pro confesso* in the case, that the prop-

erty described in the libel had been seized by the Marshal, and that the same was properly subjected to the jurisdiction of the court.

For it is well settled that a judgment by default is conclusive of the question of jurisdiction, as well as on the merits, and estops the party to deny the same. Cooper vs. Roche, 36 Md.; Milhouse vs. Inloes, 18 Md., 328, 233; Green vs. Hamilton, 16 Md. 317, 329; Flagg vs. Clements 16 Cal. 389; and foregoing authorities.

And in Buchanan vs. Biggs, 2 Yeates R., 233–4, the court well said: "This court can not enter into the inquiry whether the six casks of whisky were legally seized or not. It appears by the judgment of a proper tribunal, having full and competent jurisdiction of the matter in question, that the whisky was condemned as forfeited. That sentence is conclusive against the present plaintiff, and can not be unraveled or revised in any State court, on principles of established law and sound policy. The plaintiff might have contested the seizure in the District Court of Virginia by filing his claim there, and having failed to do so, he is precluded from trying the question in this collateral way. This is no new case. 2 Blackstone R. 977; Hard. 194; T. Raym. 336; Carth. 323, 327; 12 Vin. Abr. 95. Authorities may be found in the books wherein this doctrine is pointedly asserted."

There is also an order of the Judge which recites that "certain property, fully described in the libel filed," "and now of record in this court, together with all the improvements," etc., "and all the right, title and interest of J. P. Benjamin therein, has been seized by the Marshal." Rec. 28.

This order of the court, therefore, is as full and complete an adoption and recognition of the seizure and subjection of the property to the jurisdiction and control of the court as though the same had been made by the directions of the court. Tyler vs. Defrees, 11 Wall. 348–9.

In Miller vs. the United States, 11 Wall. 301, Mr. Justice Strong says:

"In Erwin vs. Lowrie, 7 How. 181, Mr. Justice Catron, in delivering the judgment of the court, said: 'We hold that wherever a judgment is given by a court having jurisdiction of the parties and of the subject matter, the exercise of jurisdiction warrants the presumption, in favor of a purchaser, that the facts, which were necessary to be proved to confer jurisdiction, were found.'"

And where the court determines in favor of the sufficiency of the notice and the service thereof such determination will be conclusive in a collateral action, and a judgment founded thereon can not be treated as void prior to reversal, even if the notice be defective on the service thereof imperfect. Cullen vs. Ellison, 13 Ohio State 446, 454–5; Shawhan vs. Loffer, 24 Iowa 218; Shea vs. Quintin, 30 Iowa 68; Richards vs. Skiff, 8 Ohio State 586; Lessee of Fowler vs. Whiteman, 2 Ohio State 270; Hammond vs. Devenport, 16 Ohio State 177; Wiltz vs. Boroway, 25 Ind. 380.

It is therefore too clear to admit of controversy, that the default and *pro confesso*, and judge's order establish a legal seizure of the property as alleged in the libel even if there were no other evidence in the record to establish that fact, and there had been no *second* seizure after the libel was filed.

But it was said that the Marshal's notice of seizure given to the *tenant of the United States in possession* before the libel was filed, and which was offered in evidence by plaintiffs, that he seized in his "hands the right, title, interest and estate of Judah P. Benjamin in and to the following described property," &c., shows that there was no seizure of the property, but only of the right, title, &c., of J. P. Benjamin, subject to the mortgage. This is a great mistake, for several reasons.

In Vilas vs. Reynolds, 6 Wisconsin R. 214, it was *held* that a levy upon the right, title and interest of the defendant in execution in the land, is a levy upon the land itself for all practical purposes, and a sale under such levy is good.

And where a sheriff seizes, advertises for sale, and sells "all the right, title and interest of the debtor in a lot of ground," but which was encumbered by mortgages, it must be considered as a seizure and sale of the property itself, and not of the contingent rights of the debtor to so much of the property as may remain after the mortgages are satisfied. Trudeau vs. McVicar, 1 Ann. (La.) 426.

And this is so because a mortgage is only a lien and not a sale, and the title and possession remains in the mortgageor. Ducland vs. Rousseau, 2 Annual R. 168, 173.

In the case in 1 Ann. 427, the Court says: "The sheriff, under his instructions, seized all the right, title and interest of the debtor in a lot of ground and the buildings thereon, and advertised for sale

the right, title and interest of the defendant in the property seized. This was a seizure and advertisement of the property itself."

It is therefore seen that the objection as to the sufficiency of the notice of the *first* seizure and which was made before the libel was filed, is without any legal validity whatsoever.

But even if the Marshal's notice of the first seizure, which was given before the proceedings in court were instituted, and before the *second* seizure was made under the process of the court, and after the libel was filed, was other than we have shown it to be, still the evidence would be unavailing and of no effect, as evidence is wholly inadmissable to contradict a Marshal's return, as well as any other evidence for the purpose of contradicting the recitals of the record, even though it be for the purpose of defeating and showing that the court had no jurisdiction. Brown vs. Kennedy, 15 Wall. 597; Landes vs. Brant, 10 How. 348, 371; Erwin vs. Lowry, 7 How. 172, 180; 8 Hump. 363; 2 Coldwell's (Tenn.) R. 268.

In White River Bank vs. [redacted] 29 Vt. 333, it was expressly held that an officer's return on a writ can not be contradicted or explained by extrinsic evidence or by reference to the copy of the writ left by him in serving it.

And in Dewees vs. Riley, 11 Com. Bench, 434, 443 (73 Eng. C. L. 442), it was held that the evidence of even the judge himself could not be allowed to defeat or overthrow the recitals in the record.

Indeed, as the property, as is fully shown by the testimony in the record, was in the possession of the United States, as captured and abandoned property, through its tenant, before and at the time of the first seizure and before the libel was filed, and so continued up to the condemnation and sale of the property to the third possessor (Rec. 15), the jurisdiction of the court, even if there had not been a regular and formal seizure by the Marshal, before the filing of the libel, would be clear and unquestionable.

For the reason why an actual or constructive seizure of personalty is said to be necessary is, that otherwise the decree might be rendered ineffectual. Miller vs. United States, 11 Wall. 268.

Clearly, then, when the property is in the actual possession of the government under the authority of which the court sits, the decree of the court could not be rendered ineffectual, and therefore there would not be that necessity for a *first* seizure that there would be where the property was in the possession of a third party.

In the case of The Slavers (Reindeer, 2 Wallace, 383, 402), where the collector placed a customhouse officer on board of the vessel on her arrival in port, and that officer was in the actual possession of the vessel when the same was attached by an officer under State process, but the customhouse officer still continued in possession, and the *collector*, by the directions of the district attorney, made a formal seizure for a violation of the slave-trade act, some days before the libel was filed, and the revenue officer remained in possession until the sale, when the proceeds were paid into court, it was held that the attachment was invalid, "and that the seizure was rightfully made," and the condemnation and sale sustained.

And in Jecker vs. Montgomery, 13 How. 498; S. C. 18 ib. 110, where the proceeds of a prize, which had been sold by the captor, were deposited in the treasury of the United States, it was held that the Circuit Court for the District of Columbia, as a court of admiralty, had jurisdiction to condemn the property, though there had been no seizure by the Marshal, because the proceeds were in the possession of the government, which, it was presumed, would, as a matter of course, submit to, and obey the decree of its own court. And it is established by all the authorities that the courts of the captor have jurisdiction to condemn captured property while lying in a foreign neutral port. Hudson vs. Guestiere, 4 Cranch, 293; S. C. 6 Cra ch, 281; The Arabella et al. 2 Gall., 368; The Santissima Trinidad, 7 Wheat., 283.

When property, therfore, is in possession of the Government through its officers or agents, there is in reality no occasion for a seizure by an officer of the court.

"In order to institute and perfect proceedings *in rem*," (says Judge Story, in the case of The Ann, 9 Cranch 291), "it is necessary that the thing should be actually or constructively within the reach of the court. It is actually within its possession, when it is submitted to the process of the court; it is constructively so, when, by a seizure, it is held to ascertain and enforce a right or forfeiture which can alone be decided by a judicial decree *in rem*."

The statute says the property of the persons named therein shall be liable to seizure and forfeiture, and it is made the *duty* of the President to cause the seizure of the same. It is, therefore, seen that the Statute is *mandatory*, and left no *discretion* in the President

as to the seizure of the property of persons coming within the act. Seizures, then, made by subordinate officers, in pursuance of instructions from the Attorney General, (who is presumed to represent the President,) must be taken and regarded as made by the authorization of the President. See Miller vs. United States, 268 Wall; Tyler vs. Defrees, ib. 331.

And this must more especially be so considered where the proceedings not only show such to be the case, but also show the further fact that the property was seized a *second* time by the Marshal in pursuance of process issued from the court in which the proceedings were instituted. (Rec. 29.) For the court certainly acquired jurisdiction by a seizure under its process after the libel was filed, even if it did not possess it before, under and by virtue of the first seizure, as alleged in the libel and judicially established by the default and *pro confesso* taken in the case. Miller vs. United States 11 Wall. Besides, the law is too well settled to admit of doubt or controversy, that any person may seize property for a forfeiture, and if the Government comes in and institutes proceedings to enforce the forfeiture, it will be considered a ratification of and equivalent to a previous command or authority to make the seizure. Blatch. P. C., 64, 65, 89, 90, 306, 309, 561; The Caledonia, 4 Wheat., 100, 103; Taylor vs. United States, 3 How., 197, 205–6.

And it is wholly immaterial whether the proceedings are based on the original ground of seizure, provided the comdemnation is for a sufficient cause. 3 How., 205.

The cases of Coppel vs. Hall, 7 Wall., 542. The Ouachita Cotton, 4 ib., 521; the Reform, 3 ib., 617; and Gelston vs. Hoyt, 3 Wheat., 246, *do not* (as has been supposed), *in the least* conflict with the foregoing views and authorities. The cases in Wallace related to trade and intercourse with the States in insurrection; and the defense to avoid a forfeiture was a license and authority from subordinate officers of the Government.

But the court very properly *held* that as trade and intercourse with the enemy was unlawful, *unless specially authorized and allowed by the President*, who *alone* was empowered by the statute in his discretion to authorize and permit it, the power could not be exercised by any one else, either with or without the sanction of the President; and the defense was, therefore, unavailing, and the property condemned.

And the case in 3 Wheat. was an action of trespass for a seizure which had been adjudged tortious, for a forfeiture under the neutrality act; and the defense was a justification that the seizure was made under and by virtue of instructions and authority from the President of the United States. But the court very properly overruled the defense, on the ground that the President, under the act, could not use any force outside of the army and navy for that purpose, and that he was only authorized to act and was restricted by the statute to the use of the army and navy, where the civil authority was resisted, or was, in his judgment, insufficient to enforce and execute the laws.

Such a case *surely* cannot be regarded as at all inconsistent or in conflict with the foregoing authorities, which establish beyond all doubt the validity of seizures of property for confiscation, under act 17th of July, 1862, whether made solely by the order of the President, or by the Marshal in the first instance, by the direction of the district attorney, in pursuance of instructions from the Attorney General, *and also by virtue of process issued out of the court after the first seizure and the filing of the libel.*

Indeed, the case of Gelston vs. Hoyt, 3 Wheat., 246, itself *expressly* affirms and declares the rule to be, that at Common Law any person may, at his peril, seize for a forfeiture, and that if the Government comes in and adopts his seizure and the property is condemned, it will be a complete justification of the seizure.

In the case of the Caledonia, 4 Wheat. 100, 103, Judge Story says: "It is a general rule, that any person may seize any property forfeited to the use of the Government, either by municipal law or by the law of prize, for the purpose of enforcing the forfeiture. And it depends upon the government itself, whether it will act upon the seizure. If it adopts the acts of the party, and proceeds to enforce the forfeiture by legal process, this is a sufficient recognition and confirmation of the seizure, and is of equal validity in law with an original authority given to the party to make the seizure. The confirmation acts retroactively, and is equivalent to a command."

And in Taylor vs. The United States, 3 How. 197, 205–6, Judge Story, in delivering the opinion of the court, said: "At the common law, any person may, at his peril, seize for a forfeiture to the government, and, if the government adopts his seizure, and insti-

tutes proceedings to enforce the forfeiture, and the property is condemned, he will be completely justified. So that it is wholly immaterial in such a case who makes the seizure, or whether it is irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause. This doctrine was fully recognized by this court in Gelston vs. Hoyt, 3 Wheat. 246, 310; and in Woods vs. United States, 16 Pet. 342, 358, 359. And from these decisions we feel not the slightest inclination to depart."

The filing of the libel is a ratification of the seizure. Blatch., P. C. 561; ib. 309.

But "the fact of capture," (says the court in The Nassau, 4 Wall. 641) "determines the jurisdiction, and not the filing of the libel."

And the property is then deemed to be in the possession of the court (even though the Marshal makes a seizure in the hands of another government officer and leaves the property in his hands, the possession of the latter being in law the possession of the Marshal) and monition may issue, if necessary, to compel the actual delivery of the property. Per Mr. Justice Story. Schooner Bolina, 1 Gallison's R. 81, 75; 4 Wallace 641.

The seizure of the property, then, by the treasury department of the government, as captured and abandoned property, and its *subsequent* seizure by the Marshal for condemnation, were not inconsistent. And this more especially as the tenant of the treasury department of the government was appointed and became the keeper for the Marshal, and held the property both as tenant and keeper for the United States, to the exclusion of all the world. Rec. 15. And as the seizure by the Marshal was not objected to by the Treasury Department or any one else on behalf of the government, but acquiesced in, a third party surely can not be heard to make such an objection, even if there had originally been any ground for objection; for the seizure in each case was for the benefit of the government. It was therefore wholly immaterial (as was said by the court, 3 How 205), what was the original ground of seizure, provided there was a subsequent condemnation for a sufficient cause. And as the property was condemned and sold under the seizure by the Marshal, and the money paid into the treasury of the United States, the rightfulness of the Marshal's seizure is beyond all question.

And the seizure of the property vests it in the sovereign and subjects it to the jurisdiction of his courts. Hudson vs. Gastier, 4 Cranch 293; The Nassau, 4 Wall. 634; Miller vs. United States 11 Wall. 68; Tyler vs. Defrees, ib. 331.

Upon the authority of these cases alone then we might safely rely upon the seizure involved in the case before the court being declared unquestionably valid, even had there been no seizure by the Marshal, as the record shows beyond the possibility of a doubt that the property condemned was in the full and undisturbed possession of the United States to the exclusion of all the world prior to the filing of the libel as well as up to the condemnation and sale of the land.

But as we have said, it is alleged in the libel, and all the allegations of which were taken for confessed, that the property itself, as well as all the right, title and interest of J. P. Benjamin in and to the same, had been seized. The record also shows, as we have seen, the order of the judge recognizing the fact of the seizure of the property by the Marshal before the libel was filed.

Besides it will be presumed that the court did its duty, and that it was in possession of the *res* if its duty required such possession. Jennings vs. Carson, 4 Cranch 225.

And when we add to this the Marshal's return on the process which was issued to him in the case *after* the first seizure and the libel was filed: "Received, January 26, 1865, and in obedience to the within warrant seized and took into my possession the within described property, posted copies," &c. (Rec. 29), it is conclusively and incontrovertibly established that the property itself was regularly and properly seized. For if the notice of the first seizure, before the filing of the libel, which was made and the notice thereof given, was defective and insufficient, the *subsequent* seizure under the process issued after the libel was filed, is wholly uncontradicted and was unquestionably a valid seizure, and subjected the property to the jurisdition of the court. Miller vs. United States, 11 Wall. 268; Tyler vs. Defrees, ib. 331.

We might well ask then and say with the court in Miller vs. United States, 11 Wall. 268, 294: "But how can it be maintained that there was no sufficient seizure in this case? The record shows one. The Marshal returned to the warrant that he had seized the

property, and that he then held it subject to the further order of the court. Why is not this conclusive? Can a sheriff's or a Marshal's return to a writ be contradicted by a plaintiff in error? It is true the return did not describe the mode of seizure, but neither the writ nor the law required that more than the fact should be stated. The return met all the exigencies of the writ. It can not be presumed, in the face of the record, that an illegal seizure was made, or that some act was done that did not amount to a seizure."

"In this collateral proceeding" (says Mr. Justice Strong in Brown vs. Kennedy, 15 Wall. 597), "the complainant is not at liberty to traverse the Marshal's return."

And this is so even if the agreed statement of facts show the contrary, "as no such inference against the Marshal's return" can be made "without disregard of the established rule that such a return is conclusive of the facts stated by it." Ib.

"The Marshal's return conclusively establishes that the credit was seized, and was therefore within the jurisdiction of the court." Ib. 599.

Besides it is now well settled that in a proceeding *in rem.* against real estate, which is within the jurisdiction of the court, *no actual* seizure by the officer of the court is necessary. The mere formal levy of the writ and the return of that fact is alone sufficient to invest the court with jurisdiction. Tyler vs. Defrees, 331, 349; Cooper vs. Reynolds, 10 ib. 308; 9 Pick. 170; 13 Mass. 130; 5 Greenl. 453; 11 Pick. 341; 2 N. Hamp. 137; 13 Mass. 128; 8 Pick. 402.

In Miller vs. The United States, 11 Wall. 296, Mr. Justice Strong well says: "The modes of seizure must vary. Lands can not be seized as movable chattels may. Actual manu caption can not be taken of stocks and credits. But it does not follow from this that they are incapable of being seized within the meaning of the act of Congress. Seizure may be either actual or constructive. It does not always involve taking into manual possession. Even in case of chattels movable, taking part of the goods in a house, under a *fi. fa.*, in the name of the whole, is a good seizure of all.* An assertion of control, with a present power and intention to exercise it, is sufficient."

*Scott vs. Scholey, 8 East. 474.

In Cooper vs. Reynolds, 10 Wall. 308, 317, and in Tyler vs. Defrees, 11 ib. 331, 349, Mr. Justice Miller, in giving the opinions of the court, said: "While the general rule in regard to jurisdiction *in rem* requires the actual seizure and possession of the *res* by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing, and in effect subject it to the control of the court. Among this latter class is the levy of a writ of attachment or seizure of real estate, which being incapable of removal, and being within the territorial jurisdiction of the court, is for all practical purposes brought under the jurisdiction of the court by the officer's levy of the writ and return of that fact in court."

And in Tyler vs. Defrees, 11 Wall. 349, Mr. Justice Miller, in reference to the seizure in that case which was alleged to be insufficient, continued: "When therefore, the officer, as in this case, had seized the property for condemnation, and had made known that fact to the court, it was quite certain that it would be within reach of its process when condemned for sale, and when it became necessary to put the purchaser in possession of it. No change of the title or possession could be made, pending the judicial proceedings, which would defeat the final decree. The seizure was therefore, in our judgment, sufficient to subject the land to the jurisdiction of the court."

In any and every view, then, we think there can be no doubt as to the sufficiency of the seizure involved in this case, and that the court which condemned the property had jurisdiction of the subject matter as well as of the *res*. Its judgment is therefore conclusive in a collateral action, even was it admitted, but which is not, that there are errors and irregularities in the proceedings of such a character as would authorize its reversal on a writ of error, as no error or irregularity in the proceedings can be regarded here or could have been considered in the court below which does not go the extent of showing an entire want of jurisdiction, Tyler vs. Defrees, 11 Wall. 331.

It was said, however, that the publication of monition was defective and that the court therefore had no jurisdiction to condemn the property.

But this, if true, will not avail plaintiff *in a collateral* action.

The court certainly acquired jurisdiction by the seizure of the property and the filing of the libel. And what follows or takes place in a case after jurisdiction is once acquired, is mere matter of procedure and the exercise of jurisdiction. But matter of procedure and the exercise of jurisdiction in no way or manner affects the jurisdiction of the court.

Where proceedings *in rem*, (or in the nature of such), then, are commenced by an attachment or seizure of property within the territorial jurisdiction of the court, and jurisdiction has once been thus acquired by the seizure or attachment of property, jurisdiction will not be lost by a subsequent failure to give constructive notice, by publication or otherwise, although expressly required by statute. Paine vs. Moreland, 15 Ohio, 435; Harney vs. Tyler, 2 Wall., 343, 344; Lessee vs. Loring, 17 Ohio, 409, 431; Benson vs. Cilley, 8 Ohio State, 604, 615; Carleton vs. Wash. Ins. Co., 35 N. Hamp.. 165-6; Voorhies vs. Bank United States, 10 Pet., 449; Bruce vs. Cloutman, 45 N. Hamp. 37, 38.

In like manner, proceedings instituted to effect a sale of real estate, which has descended from an ancestor, to pay debts, partake so far of the nature of proceedings *in rem*, that if there be enough set forth in the application to the court to give jurisdiction over the *res*, jurisdiction will not be lost or defeated by any irregularity in its exercise, nor by a want of actual or constructive notice to the parties in interest, by publication or otherwise. Grignon's Lessee vs. Astor, 2 How., 319; Florentine vs. Barton, 2 Wall., 216; Benson vs. Cilley, 8 Ohio State, 604, 615; McPherson vs. Cunliff, 11 S. and R. 422; Rogers vs. Williams, 8 Eng. (Ark.), 507; Woods vs. Monroe, 17 Mich., 238, 241.

And the reason is, it does not touch the question of jurisdiction.

For in a proceeding *in rem* no actual or personal notice is necessary. Thompson vs. Steamboat Morton, 2 Ohio State R., 30; Monroe vs. Douglass, 4 Sandf. Ch. R. 126; The Globe, 2 Blatch, 427; Cup vs. Board of Com., 19 Ohio State 173, 182, 186; Stewart vs. Board, &c., 25 Missp. 479; New Orleans, etc., vs. Hemphill 35, Missp. 24.

Seizure alone is notice. The Mary, 9 Cranch, 120, 144; Hollingsworth vs. Barbour, 4 Pet., 475; Keating vs. Spink, 3 Ohio State, 114, 115; Thompson vs. Steamboat Morton, 2 Ohio State, 30; Scott vs. Sherman, 2 William Black, 977.

It may be remarked, however, that the objection, that the monition as published did not correctly describe the property is destitute of all legal foundation whatever.

The objection is that the name of the town in the libel is Hurtsville, but in the monition it is Huntsville, and that the name of the notary in whose office the plan of the town was deposited is E. Barnet in the libel, and E. Barret in the monition.

That these are but typographical errors, the substitution of an "n" for "r" in Hurtsville, and an "r" for "n" in Barnet, is perfectly manifest from the fact that the description of the property in all other respects, in both libel and monition, is identical both as to the names of the streets bounding the same, and the measurement on each street corresponding to a fraction. And in both libel and monition the property is alleged to be the property of J. P. Benjamin.

No one, therefore, interested in the property could have been misled or fail to perceive what property of J. P. Benjamin's it was that was proceeded against.

And this more especially, as it is fully shown by the evidence in the record that there was no such town or place in the parish of Jefferson in which the property was situated, as Huntsville. See oirignal record 34–5, printed record being inacurate on page 16, where Huntsville is printed for Hurtsville in question.

And the evidence further shows that there is but one square in the parish inclosed or bounded by the streets named in both libel and monition, and to which the mortgage is alleged to attach. Of course then, as there was no such town as Huntsville in the parish but one called Hurtsville or Hurstville, (and which being *idem sonans* or so nearly so as not to be distinguishable in ordinary conversation, could be no ground of objection. Rivard vs. Gardner, 39 Ill. 125, 127; Barnes vs. The People, 18 Ill. 32, and this especially, as the name in the plaintiff's petition is twice written Hurtsville), and as the streets named inclosed but one square in the parish, it is seen that it was utterly impossible that any one could be in the least misled by the little alleged discrepancy between the description in the libel and monition.

In Colston vs. Berends, 1 Cro., Mees & Ros. 833, where in the body of a writ of *capias*, the word Middlesex was written by mistake Mid-

desex, it was *held* that it was not a valid objection, and was no ground for ordering the defendant to be discharged out of custody on entering a common appearance.

And in the case of Dabbs vs. Hemken et al., 3 Rob. (La.) R. 129, it was *held* that a slight variance between the description of the property in the advertisement and that in the notice of seizure, which could not mislead the debtor, was immaterial. S. P. 38, Ill. 382; 20 Geo. 689.

"Words necessary to ascertain the premises must be retained, but words not necessary for that purpose may be rejected if inconsistent. Worthington vs. Hylyer, 4 Mass. 205; Jackson vs. Sprague, 1 Paine 494; Vose vs. Handy, 2 Greenl. 322." 1 Gr. Ev., last note to sec. 301, page 351, 12th ed.

And where the description of property is true in part only, but not in every particular, the rule is: "*Falsa demonstratio non nocet cum de corpore constat.* Here so much of the description as is false is rejected, and the instrument will take effect, *if a sufficient description remains to ascertain* its application." 1 Gr. Ev. sec. 301, pages 345–6, 12th ed.

Hurtsville in the libel and Huntsville in the monition then must be regarded as Hurstville, or so nearly so as to make no material difference (there being no such town as Huntsville in the parish but one called Hurtsville or Hurstville and which are *idem sonans* or so nearly so as not to be distinguishable in ordinary conversation and therefore equivalent, 139 Ill. 125, 127; 18 ib. 32), or must be rejected altogether as *falsa designatio*, or misdescription, and, if rejected, the property would still be sufficiently described and identified from the remaining description. Even where the description of property in a judicial proceeding is such that the same can only be identified by evidence *dehors* the record, it will be sufficient to uphold and sustain the proceedings. Russel vs. Brown et al., 41 Ill. R. 183, 191-2; Choteau vs. Jones, 11 Ill. 300, 317, 318; Benedict vs. Dillehunt, 3 Scam. 287. And this is in accordance with the maxim: "*Id certum est quod certum redi potest.*"

"That is sufficiently certainly which can be made certain," was the answer of the court in Orr vs. Thomas, 3 Annual R. 584, to the objection that the decree of adjudication was void for uncertainty in the description of the property and price for which it was sold.

It is therefore seen that there was in reality no ground or just cause whatever for an attack upon the proceedings in confiscation, and that the alleged irregularities were only seized upon as a pretext to cover up and conceal that black malignity and that deep hatred which prompted the *one*, J. P. Benjamin, to suggest (Rec. 24–5), and which stimulated the *other*, John A. Campbell, to make an *unfounded* attack upon the proceedings of a United States Court and the rights of one firmly based upon the same.

All that could be said of the ground of attack, if *true*, would be that it was an irregularity in the proceedings after jurisdiction had been acquired, but furnished no ground or excuse for attack in a collateral action.

For, where a judgment is *in rem*, it is clear and well settled that it can not be impeached collaterally for error or irregularily. Knoefel vs. Williams, 30 Indiana R. 7; Monroe vs. Douglass, 4 Sandf. Ch. R. 126, 201, 205; Grignon's Lessee vs. Astor, 2 How. 319, 340; Thompson vs. Tolmie, 2 Pet. 157, 163; Voorhies vs. The Bank of the United States, 10 Pet. 449; Florentine vs. Barton, 2 Wall. 210, 216; Harvey vs. Tyler, ib. 326, 341, 345; Comstock vs. Crawford, 3 Wall. 396, 403–6; Cammell vs. Sewell, 3 Hurl. & Nor. 617; S. C. in Error, 5 H. & N. 728; Castrique vs. Imrie, 8 Com. Bench (N. S.) 1; S. C. in Error, ib. 405, (98 Eng. C. L. 405); Castrique vs. Imrie Law Rep., 4 H. L. 414.

And a "decree *pro confesso* upon constructive notice that is defective is as good as a like decree upon insufficient personal service, and such decree when made final cannot be collaterally questioned." Scott et al. vs. Pleasants, 21 Ark. 364, 367; Wiltz vs. Borroway, 25 Ind. 383, and foregoing authorities.

The distinction even in personal actions is between an *entire want of notice and a defective or insufficient notice.*

Where it appears from the record that there is an entire want of notice the judgment of any court may be treated as a nullity even collaterally. But where there is notice, though defective and insufficient, the judgment can not be assailed or questioned in a collateral action. Pursley vs. Hayes, 22 Iowa 11; 43 Me. 401, 39 ib. 35; 20 Geo. 581; 41 Missp. 561; 17 Ohio State 225: 35 N. Hamp. 162; 45 N. Hamp. 37; 30 Iowa 58; 41 Missp. 561; ib. 563.

And the reason is as stated by Mr. Justice Baldwin in Hollings-

worth vs. Barbour, 4 Pet. 477–8, where in reference to "personal service of irregular or erroneous process" he says: "In that case the party has notice in part, and may, if he will, appear and object to, or waive the irregularity."

So the defendants in error had notice in part, even if the monition were defective and might have appeared and objected to or waived the irregularity, and having failed and neglected so to do they are forever concluded by their own neglect from raising the question in this collateral action.

There being no ground of objection or exception then, either in law or fact to the proceedings in confiscation, we come directly to the consideration of the operation and effect of the decree of condemnation and sale.

And as it is provided in the act (12 U. S. Stat., 592, Sect. 7) that the proceedings were to be *in rem*, and that if the property seized was found to belong to a person named in the act, the same was to be condemned as *enemies' property*, it follows, as a matter of course, that the operation and effect of the decree of condemnation and sale must be the same as that which attaches to other decrees and sales in a proceeding *in rem*. For when well known terms in the law are used in a statute and are not introduced for the first time or defined therein, they are to be understood in the same sense and have the same meaning and effect which they had at the time they were put into the statute. [redacted] Law Rep., 7 Excheq. 293; Steamboat Raritan vs. Smith, 10 Missouri 520, 527.

It is therefore seen that in order to determine the operation and effect of the decree of condemnation and sale relied on in this case as a bar, recourse must be had to what is the known and established operation and effect of a decree and sale *in rem*.

In the Propeller Commerce, 1 Black R. 580–1, Mr Justice Clifford says: "Process *in rem* is founded on a right in the thing, and the object of the process is to obtain the thing itself, or a satisfaction out of it, for some claim resting on a real or *quasi* proprietary right in it. Consequently, the court, through its process, arrests the thing and holds possession of it by its officers, as the means of affording such satisfaction, and in contemplation of law it is in the possession of the court itself. Bened's Adm., p. 241, sec. 439."

And in the Moses Taylor, 4 Wallace R. 411, 427, Mr. Justice Field

said: "The distinguishing and characteristic feature of such a suit is, that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly. It is this dominion of the suit in admiralty over the vessel or thing itself, which gives to the title made under its decree validity against all the world."

In such a proceeding, however, there are no adversary parties—no personal defendant. Miller vs. United States, 11 Wall. 268, 305; 2 ib. 216; 2 How. 338; 18 How. 508; Gilpin, 313.

The thing itself is seized and impleaded as the defendant. 1 Black's R. 580–1; 4 Wall. 427.

But all persons who have any claim upon, or right in or to the thing, may, if they choose, come in as claimants and propound their interest in the thing and be heard, and are, therefore, deemed parties and bound accordingly, whether any party actually appears or not. The Mary, 9 Cranch 144–145; Gelston vs. Hoyt, 3 Wheat. 312, 313; Gilpin, 313, 315; 24 How. 456; 18 How. 502–3; Scott vs. Sherman, 2 Wm. Blackstone's R. 977; Buchanan vs. Biggs, 2 Yeates 233–4.

"And under the term *parties*, in this connection," (says Professor Greenleaf, in speaking of the conclusiveness of judgments. I Greenf. Ev. § 523,) "the law includes all who are directly interested in the subject-matter, and had the right to make defense or control the proceedings, and to appeal from the judgments." See ib. § 525.

Hence all persons who have this right may be, and are fairly considered as parties to the suit and bound by the result thereof.

Every party in interest is, therefore, estopped by a decree *in rem* from disputing the judgment, which as is well said by the court in Parker vs. Overmann, 18 How. 140, "is conclusive against the absent claimant as well as the present contestant."

For process *in rem*, as we have shown, is founded upon a right in or to the thing itself, and hence it is seized and impleaded as the defendant. "The object and purpose" (therefore) "of a proceeding purely *in rem* is to ascertain every possible claimant; and it is instituted on an allegation, that the title of the former owner, whoever he may be, has become divested; and notice of the proceeding is given to the whole world to appear and make claim to it. From the nature of the case the notice is constructive, only, as to

the greater part of the world; but it is such as the law presumes will be most likely to reach the persons interested, and such as does, in point of fact, generally reach them." Woodruff vs. Taylor, 20 Verm., 76.

"When property is seized" (says Judge Story in Gelston vs Hoyt, 3 Wheat., 318, 246), "and libeled as forfeited to the government, the sole object of the suit is to ascertain whether the seizure be rightful and the forfeiture incurred or not."

Such being the object and purpose of a proceeding *in rem*, it is evident and well settled that a judgment by a court of competent authority in such a case is a most solemn adjudication upon the *status* of the particular thing proceeded against, and *ipso facto* renders the thing what it declares it to be, and concludes all persons whatsoever from ever after saying that the *status* of the thing, adjudicated upon, was not such as the decree has declared it to be. 42 Me., 444; Cammell vs. Sewell, 3 Hurl. & Nor., 617; S. C. in Error, 5 H. & N., 728; Simpson vs. Fogo, 29 L. J. Chan. 667; Castrique vs. Imrie, 8 Com. Bench (N. S.) 1, 35; S. C. in Error, ib. 404; 1 Greenl. Ev., sect. 525; 2 Smith's L. C., 660–1, 6th Am. ed.

"A judgment *in rem*" (said the court, in Lord vs. Chadbourne, 42 Me. 444), "is an adjudication upon the *status* of some particular subject matter by a tribunal having complete authority for that purpose. Such an adjudication concludes all persons from saying the thing adjudicated upon was not such as is declared by such adjudication."

In Woodruff vs. Taylor, 20 Verm., 65, Mr. Justice Hall says: "Judgments, in regard to their conclusive effects as estoppels, are of two classes—judgments *in personam* and judgments *in rem*. * * * * * * A judgment *in rem* I understand to be an adjudication pronounced, upon the status of some particular subject matter, by a tribunal having competent authority for that purpose. It differs from a judgment *in personam* in this, that the latter judgment is, in form as well as substance, between the parties claiming the right; and that it is so *inter partes* appears by the record itself. It is binding only upon the parties appearing to be such by the record and those claiming by them. A judgment *in rem* is founded on a proceeding instituted, not against the person, as such, but against or upon the thing or subject matter itself, whose state, or

condition, is to be determined. It is a proceeding to determine the state or condition of the thing itself; and the judgment is a solemn declaration upon the status of the thing, and it *ipso facto* renders it what it declares it to be. * * * *

"But proceedings *in rem* may be, and often are, upon personal chattels, directly declaring the right to them. In such cases the proceeding is for the supposed violation of the property, so to speak, of some public, or municipal law or regulation, by which it is alleged the title of the former owner has become divested. The property being seized, a proceeding is then instituted against it, upon an allegation stating the cause for which it has become forfeited; upon which public notice is given, in some prescribed form, to all persons to appear and contest the allegation. It is by no means certain, that all persons having an interest in the property have actual notice of the proceeding; but if the thing itself upon which the proceeding is had, be within the jurisdiction of the court, all persons interested are held to have constructive notice; and the sentence or decree of the court, declaring the state or condition of the property, is held to be conclusive upon all the world. A sale of the property, under such sentence, passes the right absolutely."

In Gelston vs. Hoyt, 3 Wheat. 246, 318, Mr. Justice Story, in a most elaborate and well considered opinion, says: "When property is seized and libeled as forfeited to the government, the sole object of the suit is to ascertain whether the seizure be rightful, and the forfeiture incurred or not. The decree of the court in such case acts upon the thing itself, and binds the interest of all the world, whether any party actually appears or not. If it is condemned, the title of the property is completely changed, and the new title, acquired by the forfeiture, travels with the thing in all its future progress."

"The reason, however of this rule," says Judge Story, at page 319–20 of the above case of Gelston vs. Hoyt, "is to be found in the nature of proceedings *in rem*. To such proceedings all persons, having an interest or title in the subject matter, are, as we have already stated, in law, deemed parties; and the decree of the court is conclusive upon all interests and titles in controversy before it. The title of forfeiture is necessarily in controversy in a suit to establish that forfeiture; and, therefore, all persons having a right or

interest in establishing it (as the seizing officer has) are, in legal contemplation, parties to the suit. * * * But if he were a mere stranger, he would still be bound by such sentence, because the decree of a court of competent jurisdiction *in rem*, is, as to the points directly in judgment, conclusive upon the whole world."

And in Williams vs. Armroyd, 7 Cranch R. 423, 432, Chief Justice Marshall, in delivering the opinion of the court, holds this emphatic language: "It appears to be settled in this country that the sentence of a competent court, proceeding *in rem*, is conclusive with respect to the thing itself, and operates as an absolute change of the property. By such sentence, the wright of the former owner is lost, and a complete title given to the person who claims under the decree. No court of co-ordinate jurisdiction can examine the sentence. The question, therefore, respecting its conformity to general or municipal law, can never arise, for no co-ordinate tribunal is capable of making the inquiry. The decision in the case of Hudson & Smith vs. Guestier, reported in 6 Cranch, is considered as fully establishing this principle."

In Smith's L. C., vol. 2, pages 827–8, 6 Am. ed., where many cases and illustrations of proceedings *in rem* are given the learned editors of that work thus state the law: "The rule that estoppels are only binding on parties and privies, meets with an exception in the case of estopples *in rem*, where the law acts directly on the thing itself, and renders it that which the judgment declares it to be. Ante, 669; Lord vs. Chadbourne, 42 Maine, 429; Cammell vs. Sewell, 3 Hurls. & N. 617; 5 ib. 728; The Railroad vs. Hemphill, 35 Miss. 17."

And in Bradstreet vs. Neptune Insurance Company (3 Sumner 600), Judge Story says: "That the sentence of a foreign court of admiralty and prize *in rem* is in general conclusive, not only in respect to the parties in interest, but also for collateral purposes, and in collateral suits, not only as to the direct matter of title and property in judgment, but also to the facts on which the sentence professes to proceed, although formerly subject to much doubt and controversy, is now a point fully established in the courts of England and the courts of the United States. It is sufficient on this subject to refer to the cases of Croudson vs. Leonard, 4 Cranch R. 434; Rose vs. Himely, 4 Cranch R. 241; and Hudson vs. Guestier,

4 Cranch R. 281. It does not strike me that any sound distinction can be made between a sentence pronounced *in rem* by a court of admiralty and prize, and a like sentence pronounced by a municipal court upon a seizure or other proceeding *in rem*. In each case the sentence is conclusive as to the title and property, and it seems to me that it must be equally conclusive as to the facts on which the sentence professes to be founded. This, I think, is the settled doctrine in England and in the courts of the United States. It is a just result from the whole reasoning in Rose vs. Himely, 4 Cranch R. 241; The Mary, 9 Cranch R. 126, 142 to 146; and Gelston vs. Hoyt, 3 Wheat R. 246."

And the High Court of Errors and Appeals of Mississippi, in most elaborate and well considered opinions in two cases, and to which we would solicit the particular attention of the court, (25 Missp. R., 429; 35 Missp. R. 24), *held*, that the condemnation of land by proceedings *in rem* were absolute and conclusive upon all the world, though no other notice whatever was given than that resulting from the entry upon and proceedings against the property itself.

Mr. Greenleaf, 1 Gr. Ev. § 541, thus states the law even as to foreign judgments: "As to *foreign judgments in rem*, if the matter in controversy is land, or other *immovable property*, the judgment pronounced in the *forum rei sitæ* is held to be of universal obligation as to all matters of right and title which it professes to decide in relation thereto."

Judge Blackstone, in his masterly and elaborate judgment in Scott vs. Sherman, Wm. Bl., 977, 982, thus states the law: "That if a stranger claims property on the information, and on the trial a forfeiture is found, by the condemnation the property is altered against the right owner, though he be not the claimer on record."

In Magee vs. Bierne, 39 Penn., 63–4, which was a suit against a sheriff, for seizing and selling A's goods in an attachment suit against B, the sheriff gave in evidence the record in the attachment suit, and the court admitted that, if the attachment suit had been altogether a proceeding *in rem*, it would have been a bar to the action under the rule declared in Scott vs. Sherman.

And the binding force and effect of a judgment *in rem* is strongly and forcibly illustrated by a late decison of the Queen's Bench in England, in the case of Castrique vs. Behrens, 3 Ellis and Ellis (Q. B.) 709, (107 Eng. C. L. 708.)

The facts connected with the above case were as follows: An English holder of a bill of exchange, which had been draw by the master on the owner in England, who refused to accept, transferred it to a French subject, who enforced the same against the ship in France by a proceeding *in rem*, and the ship was sold under the decree.

Subsequently the English owner brought an action in England to recover the ship, which the Exchequer Chamber on Error held could not be maintained, as the French judgment *in rem* was a bar to the suit. Imrie vs. Castrique, 98 Eng. C. L., 403.

But the defeated plaintiff, in order to obviate the effect of this decision brought an action in the Court of Queen's Bench against the English holder of the bill of exshange, alleging in his declaration that he had conspired with the subsequent French indorsees to indorse them the bill without value, in order that they might attach the ship in France, by fraudulently representing themselves as holders for value, but the court, although these facts were admitted on demurrer, *held*, that the declaration was bad, since so long as the French judgment *in rem* remained unreversed, it was conclusive on every one, and no action would lie in England in respect to the fraudulent conduct described in the declaration.

It is therefore seen that according to one unbroken, as well as irresistible current of authority, a judgment *in rem* is absolutely conclusive as to the whole world.

It was said, however, that Congress could not have intended, that such should be the effect of the judgment *in rem* under the confiscation act of July 17, 1862. The answer is (if any indeed is necessary), that the statue expressly provides: "That proceedings *in rem* shall be instituted," and if the property shall be found to belong to a person named in the act, that "the same shall be condemned as *enemies'* property." The words *in rem* are technical terms and have from time immemorial had a well known meaning and signification. And when well known terms of the law are used in the constitution or statutes of the United States, and are not defined in the same, they are to be understood in the sense in which they were known and used in the law. 2 Day's R. 211, 212, 176, 3 Wheat. 610, 630; How. 18 280, 272; ib. 311, 313, 307.

This being established, and it being also further established, by the foregoing authorities, that a judgment in a proceeding *in rem* is final and conclusive as to the whole world, it follows as a matter of course, that Congress, by requiring the proceedings in confiscation to be *in rem*, intended (in the absence of any provision in the statute to the contraty), that a condemnation "as *enemies' property*" should likewise be final and conclusive upon all the world. For it is not to be supposed that Congress, when it required the proceedings to be *in rem*, and the property to be condemned as enemy's property, were not well aware of the force and effect of such a judgment in a proceeding *in rem*.

To hold otherwise would be to impute to Congress a want of knowledge of the legal force and meaning of the well known terms of the law which they have put in the statute. This we feel assured the court will not do, but on the contrary will give full force to the judgment *in rem*, and thereby effectuate the evident intention of Congress in passing the act.

And this more especially, as the Court in the case of Miller vs. United States, 11 Wall. 268, has held that the proceedings under the act, seventeenth July, 1862, are *in rem*.

Defendants in error, then, cannot be heard to say that J. P. Benjamin was not the sole owner of the property; that Joseph Benjamin was the owner of one-half, which could not be confiscated, and that the property condemned passed *cum onere* with the burden of the mortgage. They, as well as all the world, are estopped by the record from asserting or setting up any such matters in a collateral action. Mayo vs. Foley, 40 Cal. 281, 283–4. The matters of title and forfeiture have passed into *rem judicatam* and all the world are concluded thereby.

It is charged in the libel (Rec. 26): "That Judah P. Benjamin is and was on the seventeenth day of July, 1862, and previously thereto had been, the owner of the above described property." And the decree of the court is as follows: "The delay allowed by law having expired, and no claim or defense having been filed, on motion of the District Attorney it is ordered that all persons interested in property seized, be pronounced in contumacy and default, and the libel adjudged and taken *pro confesso*. And the monition, issued in this case, having been heretofore returned, the usual proclamation

having been made, the default of all persons duly entered, and the law and the evidence considered, it is thereupon, on motion of the District Attorney, ordered, sentenced and decreed by the court now here, and his Honor the District Judge, by virtue of the power and authority in him vested, doth hereby order, sentence and decree that the two squares of ground, with all the improvements thereon, the property of J. P. Benjamin, fully described in the libel of information on file, be and they are hereby condemned as forfeited to the United States. It is further ordered, that the Clerk of this court issue a writ of *venditio exponas* to the Marshal of the District, returnable on the tenth of May 1865, and that upon the return thereof the proceeds be distributed according to law." Rec. 31–2.

Here, then, we have the solemn judgment of the United States District Court establishing the fact that the property described in the libel was the property of Judah P. Benjamin, and that the same was forfeited to the United States, and was ordered to be sold.

The title and ownership of the property at the time of seizure and condemnation, as well as the forfeiture itself, was finally and conclusively settled, as against all the world, by this decree of a competent court.

For by the act of Congress (12 U. S. Stat. 591, sec. 8), it is provided that "if the property shall be found to have belonged to a person named in the act, the same shall be condemned as enemies' property." The finding of the court that the property, proceeded against, was the property of J. P. Benjamin, is as conclusive as that of the forfeiture itself. See Miller vs. United States, 11 Wall.

The sufficiency of the proof on which the court took its action, is not inquirable into, because *it does not* touch the question of jurisdiction. Comstock vs. Crawford, 3 Wall, 406.

The rule is undeniable that the judgment or decree of a court of competent jurisdiction is final, not only as to the subject matter thereby determined, but as to every other matter which the parties might have litigated in the cause and which they might have had decided. Christmas vs. Russell 5 Wall. 290, 307 and authorities cited; Clemens vs. Clemens, 37 N. Y. R. 59, 74 ; Comparet et al. vs. Hanna et al., 34 Indiana R. 74, 77–78; Aurora City vs. West, 7 Wall. 82, 102–3; Herrett et al. vs. Yandes 34 Indiana R. 102; Danater et al. vs. Prentiss, 22 Wis. 311, 315, 317. Packet Co. vs. Sickles, 5 Wall. 592.

In Barker vs. Cleveland, 19 Mich. 235–6, it is said: "And it is immaterial whether the point was actually litigated in the suit, if its determination was necessarily involved in the judgment. Bellinger vs. Craigue, 31 Barb., 537."

In like manner the sentences of a foreign Prize Court are conclusive evidence that the property has been changed as well as of the existence of the matter of facts which they clearly and directly decide. Hobbs vs. Henning, 17 Com. Bench 791; (112 Eng. C. L. 791); Dalgleish v. Hodgson, 7 Bingh. 495; 5 M. & P. 407; Dernordi vs. Motteux, 2 Doug. 575; Calvert vs. Bovill, 7 T. R. 523; Fisher vs. Ogle, 1 Campb. 418; Saloucci vs. Woodmass Park, Ins. 362; Hughes vs. Cornelius, 3 Show. 495. Castrique vs. Imrie, Law Rep. 4 H. L. 414; and foregoing authorities.

The inevitable conclusion, therefore, is that the decree of condemnation, relied on as a bar, is conclusive. Nor is this to be deemed any hardship on any one. For all parties who had any claim or title to assert in or to the property were bound to come in and set up the same, or stand forever concluded by the decree. The Nassau, 4 Wall. 634; Scott vs. Sherman, 2 Wm. Bl. R. 977; 18 How. 140; 2 Yeates 233–4; Attorney General vs. Norsted, 3 Price's Exchequer R. 97; 10 Wheat. 431. By making default and allowing the libel to be taken *pro confesso*, they admitted all the allegations of the libel to be true, and the court, as is said in Miller vs. United States, 11 Wall. 268, 301, 303, 304, was as fully warranted in making a decree of condemnation as though the facts alleged in the libel had, on an issue, been expressly found to be true.

The default and *pro confesso* was not against Judah P. Benjamin alone, but all the world. The language is: "The delay allowed by law having expired, and no claim or defense having been filed, on motion of the District Attorney it is ordered that all persons interested in the property seized be pronounced in contumacy and default, and the libel adjudged and taken *pro confesso*." Rec. 31–2. All persons interested in the property seized are therefore concluded by this default and *pro confesso*.

For where no one comes in as claimant, the law is, as declared by Chief Justice Marshall, in The Mary, 9 Cranch. 126, 142, as follows: "By the rules of the court the condemnation of the vessel was inevitable; not because, in fact, she was British property, but

because the fact was charged, and was not repelled by the owner, he having failed to appear and put in his claim." See 35 N. Hamp. 132.

Indeed, it was held in Shover vs. Shell, 24 Ark. 122, that a judgment by default without evidence was conclusive in a collateral action, and could not be treated as a void judgment.

"And having neglected" (as is well said by Mr. Justice Blackstone, in Scott vs. Sherman, 2 Wm. Bl. 977), "this opportunity of putting in his claim, and trying the point of forfeiture, it was his own *laches*, and he shall forever be concluded by it, not only in respect to the goods themselves, but every other collateral remedy for taking them."

And in Attorney General vs. Norstedt, 3 Price's Ex. R. 97, it was *held* that even the King's superior title by forfeiture was concluded by a decree and sale *in rem* on a claim for salvage, he having failed and neglected to come in and set up his title paramount.

And in Monroe vs. Douglass (4 Sandf. Ch. R., 126), a proceeding *in rem* against real estate in Scotland was *held* valid, even as against a minor, notwithstanding the proceedings took place during the existence of war between this country and Great Britain, and the minor being in this country consequently had no notice and no means of appearing and objecting to the proceeding.

In Gelston vs. Hoyt, 3 Wheat, 246, 318, Mr. Justice Story, in a most elaborate and well considered opinion, says: "When property is seized and libeled as forfeited to the government, the sole object of the suit is to ascertain whether the seizure be rightful, and the forfeiture incurred or not. The decree of the court in such case acts upon the thing itself, and binds the interest of all the world, whether any party actually appears or not. If it is condemned, the title of the property is completely changed, and the new title, acquired by the forfeiture, travels with the thing in all its future progress."

And in the Santa Maria (10 Wheat. 431), it was held that "every existing claim which a party has failed to make in a proceeding *in rem*, before a final decree is to be considered as waived, and can not be brought forward on any *subsequent proceedings*."

In the case of the Nassau, 4 Wallace 634, the Court well says: "Whether a maritime lien, like the one in this case, is lost when the property is captured *jure belli*, would have been a proper ques-

tion for investigation and decision by the prize court that condemned the Nassau, and which the libelants, on presentation to that tribunal, could have had decided."

"The fact of capture determines the jurisdiction, and not the filing of the libel. When capture as prize of war, the property is in the custody of the law, and remains there to await the decision of a prize court, and, if condemned, *all claims to the property are by it adjusted.*" Ib. 641.

In Taylor vs. Caryl, 12 Harris (24 Penn. State 274), the court, in reference to a mariner's lien, said that "that would not prevent an information in the exchequer to obtain a condemnation for a breach of the revenue laws, nor a libel in admiralty for a maritime hypothecation; and it could not prevent an absolute sale of the ship under such proceedings, even though founded on claims of inferior degree. Whether the inferior claim were in the exchequer or in admiralty, the sailors would have to follow their vessel there and make their claim. 9 Wheat. 409; 1 Rob. 178; 10 Miss. 527; 5 Black. 483. They could not disregard the process already commenced. Even government can not set up her superior claims for forfeiture after the ship has been sold under an order of court for an inferior one. 3 Price 97."

All mortgages and claims, then, were concluded by the decree of condemnation and sale *in rem.*

And this principle was fully recognized by the United States District Court, by making a rule, under the provi ions of the statute (12 U. S. Stat. 592, sec. 8), ordering the Marshal in all cases to erase the mortgages on property which had been condemned, and to annex the certificate of cancellation to his deed. (Rec. 37–8.)

Besides, by the law of Louisiana a mortgage is but a lien, and not a *jus in re.* It is not a sale. Ducland vs. Rousseau, 2 Ann. (La.) R. 173, 168.

And: "A lien on land constitutes no property or right in the land itself." Ward et al. vs. Chamberlain et al., 2 Black's R. 437.

Even a mariner's lien (and which is said to adhere to the last plank of the ship) gives no right in the vessel until condemnation. Taylor vs. Caryl, 12 Harris (24 Penn. St. 266.)

As a matter of course, then, as a mortgage by the laws of Louisiana only constitutes a lien on the land, and as a lein gives no right or property in the land itself, it would seem to follow that

even had the mortgagee come in and claimed the land or the amount of the mortgage out of the proceeds of the sale of the same, the claim could not have been allowed, as the act of July 17, 1862 (says this court in Tyler vs. Defrees, 11 Wall. 345), was designed to introduce the principle of confiscating enemy property seized on land like that seized on water," and according to that principle all mortgages and liens are displaced and superseded by the capture, and can not be allowed.

In the case of The Hampton 5 Wall. 372, where a loyal citizen having a *bona fide* mortgage on the vessel came in and claimed the ship, it was *held* that his claim, according to the principles of international law could not be allowed, and payment of the mortgage out of the proceeds of the sale of the vessel was refused, notwithstanding there was no doubt of the claimant's loyalty and the *bona fides* of his mortgage.

And in the case of the Siren, 7 Wall. 152, 162, the court, after stating that the District Courts of the United States have jurisdiction to hear and determine all questions respecting claims arising after the capture of the vessel, says: "Outstanding claims upon the vessel, existing previous to the capture, can not be considered. This exclusion rests not on the ground of any supposed inability of the court to pass upon these claims correctly, but because they are superceded by the capture."*

And the reason of the above rule is, as stated by Mr. Justice Miller, in giving *the unanimous* opinion of the court in The Hampton, 5 Wall. 374, as follows: "But it is unnecessary to examine this question minutely, because an obvious principle of necessity must forbid a prize court from recognizing the doctrine here contended for. If it were once admitted in these courts, there would be an end of all prize condemnations. As soon as a war was threatened, the owners of vessels and cargoes which might be so situated as to be subject to capture, would only have to raise a sufficient sum of money, by *bona fide* mortgages, to indemnify in case of such capture. If the vessel or cargo was seized, the owner need not appear, because he would be indifferent, having the value of his property in hand already. The mortgagee having an honest mortgage which he could establish in a prize court, would either have the

* The Battle, 6 Wallace, 498; The Hampton, 5 ib. 372; and The Frances, 8 Cranch, 418.

property restored to him, or get the amount of his mortgage out of the proceeds of the sale. The only risk run by enemy vessels or cargoes on the high seas, or by neutrals engaged in an effort to break a blockade, would be the costs, and expenses of capture and condemnation, a risk too unimportant to be of any value to a belligerent in reducing his opponent to terms.

"A principle which thus abolishes the entire value of prize capture on the high seas, and deprives blockades of all dangers to parties disposed to break them, can not be recognized as a rule of prize courts."

It would therefore seem that as the confiscation act was designed to introduce the principle of confiscating enemy property on land like that seized on water (Tyler vs. Defrees, 11 Wall. 331), the mortgage in favor of defendant's ancestor could not have been allowed, even had they come in and claimed either the property or to be paid the amount of the mortgage out of the proceeds of sale.

For the principle of exclusion in the one case is equally applicable in the other. But it is not necessary to rely on this principle of excluding a mortgagee in a prize case. For even if the mortgagee had been the absolute owner of the property, his title and claim would have been absolutely displaced by a sale under a condemnation *in rem*, and the purchaser would have taken an absolute title free from the claims of all persons whatsoever. Scott vs. Sherman, 2 Wm. Bl. R. 977; Monroe vs. Douglass, 1 Sandf. Ch. 126; Magee vs. Bierne, 39 Penn. St. 63–4; Syndics vs. Nicholson, 4 Louisiana R. 83–4, and foregoing authorities.

For a judgment by default is as conclusive, as we have seen above, as if it had been rendered after a regular trial of the case. See, also, Foster vs. Milliner, 50 Barb. 394, 385; Mayo vs. Foley, 40 Cal. 281, 283–4; Gilman vs. Harseley, 5 N. S. (La.) 664.

The cases, which were cited with reference to confiscations in England and in this country during the period of the revolution, have no sort of application to this case, as will at once be seen by reference to the same. The forfeitures, referred to in those cases, were not effected or enforced by a proceeding *in rem*, and consequently only the actual interest of the party in the property confiscated passed. They related to specific statutory confiscations and forfeitures, resulting as a consequence from an attainder for treason,

etc. The question as to what was the interest of the parties, in those cases, which was forfeited, did not and could not, from the very nature of the mode and manner of the proceedings, arise until after an attainder had been effected.

Upon a party being attainted by statute, or by reason of a sentence of death for treason, it followed, as a matter of course, that only such property as he actually had passed or escheated to the government as a consequence from the attainder. For, "in the case of an inquest of office for escheat or forfeiture, the principal fact only, and not the title, is in question." 24 Penn. State, 268.

And in some of the principal cases which were cited, it will be seen that the property of persons, who had *not* been attainted at all, was seized and sold on the erroneous supposition that it was the property of the persons who had been attainted, and, of course, such sales were invalid, and passed no title.

There was no condemnation of specific property by a proceeding *in rem*, and consequently those sales were not attended with the consequences of a sale under a decree *in rem*, which, as we have seen, is binding on the whole world, and absolutely renders the property what it declares it to be.

In Hobbs vs. Henning, 17 Com. Bench. 791, 823, (112 Eng. C. L. 791, 821, 822), Chief Justice Earle says: "The rule making the decision of a court which creates the status of a person or thing conclusive upon all persons as to the existence of that status, has been regarded as salutary. Sentences of nullity of marriage in the Ecclesiastical courts, of forfeiture in the Exchequer, of settlements of paupers by the quarter sessions, and of prize in prize courts are examples."

And in Castrique vs. Imrie Law Rep. H. L. 414, the House of Lords *held* that the purchaser of a British ship which had been sold under a decree *in rem* in France took an absolute title, and that a mortgagee whose claim had, through an error of both law and fact, been rejected by the French court, could not maintain an action even in England (*and by whose laws he had the superior title*), for the recovery of the ship, as it was the ship itself which had been sold.

Whatever then may have been the nature of the interest (whether a fee or only a life estate) which was condemned and

sold, certain it is that the sale of the thing for that time, passed an absolute estate to the purchaser discharged of the mortgage, as far as he was concerned and had an estate in the property.

If it was only a life estate which was condemned and sold the purchaser would still be entitled to his life estate and could not be interfered with by those interested or entitled in remainder. For even a remainderman cannot have partition of an estate during the tenancy for life. Taber vs. Wiseman, 2 Ohio State 208; 1 Sandf. Ch. 202; 2 Paige Ch. 389.

But on the other hand, if it was a fee(as we have shown it was) which was condemned and sold, then the purchaser took the property free of the mortgage forever. In either view, then, the opinion of the majority of the Supreme Court of Louisiana holding that the property was liable in the hands of the purchaser at the judicial sale under the decree *in rem*, is erroneous.

We may well say, then, with Judge Porter, in Syndics vs. Nicholson, 4 L. R. 85–86, (which was a suit to recover a vessel which had been purchased by the defendant, at a judicial sale, under a decree *in rem* by the United States District Court in New Orleans, on the application of a creditor, after the owner had made a surrender of all his property in a State court for the benefit of all his creditors, and which surrender had been accepted by the court and a syndic appointed, and who was consequently invested with the legal title to the property for the common benefit of all the creditors, and in which Judge Porter *admitted that his decision would defeat the policy of the laws of Louisiana*, which was an equal distribution of the property of an insolvent among all his creditors): "By the monition every one who could have asserted a right to or in the property libeled was a party to the suit, and the judgment, consequently, is a complete bar to all rights which could have been exercised there." * * * * * *

"The settled principles of law give to the judgment *in rem* the authority of the thing judged against all parties to it, that is, against all the world who had a claim to assert on the property. These principles must govern this case, be the consequences what they may."

It therefore follows, *it seems to us*, that as the judgment of the majority of the *present* Supreme Court of Louisiana is wholly sub-

versive of the well established rule (both in England and this Country) in relation to the operation and effect of a decree of condemnation and sale in a proceeding *in rem*, the same must be reversed and judgment entered for the plaintiff in error.

Ακηκόατε· ἑωράκατε· πεπόνθατε· εχετε· δικάζετε.—Lysias.

L. MADISON DAY,
In propria persona.

L Madison Day